

TERMS & CONDITIONS OF CREDIT

The following Agreement shall apply once credit has been granted.

1. Definitions

1.1 "Agreement" means these standard contract terms and conditions together with the attached commercial credit application and form of guarantee and indemnity from directors/shareholders.

1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorization or other form as provided by Optimum Cabling to the Client.

1.3 "Equipment" shall mean any kind of Equipment, vehicles, tools or accessories supplied, manufactured, installed or provided by Optimum Cabling or its affiliates to the Client (and where the context so permits shall include any supply of services and/or products). The Equipment shall be as described on the invoices, quotation, authority to hire or any other work authorization form provided by Optimum Cabling to the Client.

1.4 "Optimum Cabling" shall mean Optimum Cabling Pty Ltd T/A Optimum Cabling, its successors and assigns or any person acting on behalf of and with the authority of Optimum Cabling Pty Ltd.

1.5 "Price" shall mean the price payable for the Services as agreed between Optimum Cabling and the Client in accordance with clause 5 of this contract.

1.6 "Services" shall mean all Services supplied by Optimum Cabling to the Client and includes any advice or recommendations.

2. Contract Formation

2.1 No Contract shall come into existence until the Client's order has been accepted by Optimum Cabling and such acceptance has been received by the Client. The Contract shall be deemed to be concluded at the time and place where such acceptance is received by the Client.

2.2 The Services and/or Equipment rendered are subject to this Agreement to the exclusion of any other terms and conditions stipulated or referred to by the Client. The Client acknowledges that it is aware of the contents and agrees to be bound by this Agreement.

3. Warranty

3.1 Unless specified otherwise and in addition to any rights that the Client may have under statute, Optimum Cabling warrants the Client that for a period of one (1) year from invoice date of materials or services, the materials and services shall be free from defects affecting normal use (Standard Warranty) and Optimum Cabling will, in the event of defects, at its election, repair or replace faulty materials.

3.2 The Standard Warranty subject to clause 3.1 shall not apply to any loss, damage, fault, failure or malfunction due to external causes including, but not limited to:

3.3 accident, abuse, misuse, problems with electrical power, failure to perform required preventative maintenance, normal wear and tear, acts of God, fire, flood, war, acts of violence or any similar occurrence; or

3.4 any attempt by the Client or any other party, whether direct or indirect, to adjust, repair, service or support the materials or services without written approval or authorization by Optimum Cabling; or

3.5 any problems or failure arising out of or in relation to the use of parts and/or components not supplied by Optimum Cabling.

3.6 While not affecting any non-excludable warranty or guarantee permitted by law, Optimum Cabling does not make any representations or give any warranty that manufactured products are fit for any particular purpose and this Standard Warranty is given in place of all terms, conditions, warranties, representations and obligations permitted by law or otherwise including warranties or conditions of merchantability, fitness for purpose, satisfactory quality and/or compliance with description, all of which are hereby excluded to the fullest extent permitted by law.

4. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair-Trading Acts ("FTA")

4.1 Nothing in this Agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

5. Price and Terms of Payment

5.1 At Optimum Cabling's sole discretion the Price shall be either:

- (a) As indicated on invoices provided by Optimum Cabling to the Client in respect of Services supplied; or
- (b) Optimum Cabling's quoted Price which shall be binding upon Optimum Cabling provided that the Client shall accept Optimum Cabling's quotation in writing within (30) days.

5.2 Optimum Cabling reserves the right to change the Price in the event of a variation to Optimum Cabling's quotation. Any variation from the plan of scheduled works or specifications will be charged for on the basis of Optimum Cabling's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.

5.3 Any claims arising from invoices must be made in writing within seven (7) days from the date the invoice was issued.

5.4 Unless otherwise stated payment shall be due within thirty (30) days of the invoice date.

5.5 Payment will be made by cash, or by direct debit, or by bank cheque, or by any other method as agreed to between Optimum Cabling and the Client.

5.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

6. Retention of Title

6.1 Optimum Cabling and the Client agree that ownership of the Services shall not pass until:

- (a) the Client has paid Optimum Cabling all amounts owing for the particular Services and/or Equipment; and
- (b) the Client has met all other obligations due by the Client to Optimum Cabling in respect of all contracts between Optimum Cabling and the Client.

6.2 Receipt by Optimum Cabling of any form of payment other than cash or direct debit shall not be deemed to be payment until that form of payment has been honoured, cleared or recognized and until then Optimum Cabling's ownership or rights in respect of the Services and/or Equipment shall continue.

6.3 It is further agreed that:

- (a) Until such time as ownership of the Services and/or Equipment shall pass from Optimum Cabling to the Client, Optimum Cabling may give notice in writing to the Client to return the Services and/or Equipment or any of them to Optimum Cabling. Upon such notice the rights of the Client to obtain ownership or any other interest in the Services shall cease.
- (b) If the Client fails to return the Services and/or Equipment to Optimum Cabling, then Optimum Cabling or Optimum Cabling's agent may enter upon and into the land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Services and/or Equipment are situated and take possession of the Services and/or Equipment so delivered or erected.

7. Default and Consequences of Default

7.1 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 Optimum Cabling sole discretion such interest shall compound monthly at such a rate) as well as before any judgment.

7.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees, expenses, costs or disbursements incurred by Optimum Cabling.

7.3 If the Client defaults in payment of any invoice when due the Client shall indemnify Optimum Cabling from and against all costs and disbursements incurred by Optimum Cabling in pursuing the debt including, but not limited to, legal costs of a solicitor and own client basis and Optimum Cabling's debt collection agency costs.

7.4 If any account remains overdue after thirty (30) days then a late payment fee of an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) may be levied for administration fees which sum shall become immediately due and payable.

8. Force Majeure

8.1 Optimum Cabling shall not be liable for any failure or delay to supply goods nor to perform to any contract quoted or for the loss or damage to goods and/or equipment sold by Optimum Cabling to the

Client directly or indirectly caused by Force Majeure, which terms shall include, but not limited to, any act or neglect of any carrier, subcontractor, manufacturer or supplier of Optimum Cabling, acts of God, strikes, lock-outs, bans or other industrial disturbances, fire, flood, explosion, theft, civil riot or commotion, war, embargos, shortage of labour, or any other happening matter or thing beyond control of Optimum Cabling.

8.2 No such failure arising out of or in relation to the events in clause 7.1 shall entitle the Client to terminate its contract and Optimum Cabling's obligations to the Client shall be suspended without liability on the part of Optimum Cabling while such causes exist.

8.3 Optimum Cabling agrees to the effect, and the Client agrees to accept, delivery whenever such causes of delay have been remedied.

9. Notification

9.1 The Client shall provide Optimum Cabling written notice within seven (7) days or immediately after of the following events occurring:

- (a) any change to the Client's trading address, registered particulars, legal entity, ownership or structure of management or control of the applicant;
- (b) the issuing of legal proceedings against the Client; or
- (c) the appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to the Client.

9.2 The Client indemnifies Optimum Cabling and each of its directors, employees, servants, agents and contractors against all losses, costs and expenses incurred by Optimum Cabling arising out of or in relation to the events in clause 9.1, until the Client has provided Optimum Cabling with written notice.

10. Privacy Act

10.1 The Client and/or the Guarantor/s (herein referred to as the Client) agree for Optimum Cabling to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by Optimum Cabling.

10.2 The Client agrees that Optimum Cabling may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a) to assess an application by the Client; and/or
- (b) to notify other credit providers of a default by the Client; and/or
- (c) to exchange information with other credit providers as to the status of this credit account where the Client is in default with other credit providers; and/or
- (d) to assess the credit worthiness of the Client.

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

10.4 The Client consents to Optimum Cabling being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

11. Governing Law

11.1 These terms and conditions are governed by the laws of Western Australia (WA). Each party submits to the nonexclusive jurisdiction of the courts of WA and the courts which hear appeals from those courts.

12. General

12.1 The Client agrees that Optimum Cabling Pty Ltd T/A Optimum Cabling (Optimum Cabling) may, in its absolute discretion, without giving notice to the Client, withdraw or vary any credit facility with the Client. Upon withdrawal of any credit facility, all moneys owing by the Client to Optimum Cabling will become immediately payable by the Client without the necessity for any demand for payment of those moneys being made by Optimum Cabling to the Client. This Agreement may be modified at any time and such modifications will be binding and effective on the Client upon notification.

12.2 In the event that any of these terms and conditions or other documentation provided by Optimum Cabling conflict in meaning, interpretation or fact these terms and conditions will prevail unless otherwise agreed in writing.

12.3 If any provision or part of a provision of this Agreement is held to be illegal, unenforceable or otherwise invalid, that provision or part of the provision will be deemed to be severed from this Agreement and the remainder of these terms and conditions will continue in effect.