

## ARC Electrical & Data – Terms and Conditions of Trade

By instructing Electrician to supply the Goods or Services, Client acknowledges that it has read and agrees to be bound by the terms of this agreement.

### 1. Definitions

**Electrician** means ARC Electrical & Data and its successor and assigns.

**Client** means the client as per the front of the invoice or their authorised representative.

**Goods** means goods supplied by Electrician to Client under this agreement.

**Intellectual Property Rights** means any and all intellectual and commercial property rights throughout the world including, without limitation, copyright, trademarks whether registered or unregistered, designs, patents, confidential information, know-how and trade secrets, whether or not now existing and whether or not registered or registrable and includes applications for and any right to apply for registration of such rights and includes all renewals and extensions

**Order** means an order placed by Client with Electrician for the supply of Goods and/or Services whether or not Electrician has issued a quotation for the supply of the Goods and/or Services.

**PPSA** means the *Personal Properties Securities Act 2011* (Cth).

**Price** means the price of Goods and Services set out in Electrician's tax invoice and includes the Goods and Services Tax (GST), postage, handling, freight and other charges affecting the cost of the Goods or Services.

**Services** means goods supplied by Electrician to Client under this agreement.

### 2. Quotation and orders

- 2.1 Unless previously withdrawn, a quotation issued by Electrician is open for acceptance for 60 days. Electrician reserves the right to refuse any Order placed by Client within 7 days of the Order being placed.
- 2.2 Any quotation is based on Electrician's professional estimation of where existing drainage, sewer pipes, water or gas lines and electrical cables have been laid. If this is not the case or if they are inaccessible or unusable in their present state, Electrician reserves the right to vary the quotation.
- 2.3 Once an Order has been accepted by Electrician, Client cannot cancel it without the express consent of Electrician. Where Electrician has already ordered goods from a third party, cancellation will only be possible if Electrician can return the goods to the third party at no loss to Electrician.
- 2.4 Electrician may, at any time after acceptance of an Order, cancel the supply of Goods or Services or any part of them and Electrician will not be liable for any loss or damage suffered by Client as the result of such cancellation.
- 2.5 If there is any change, variation in the Goods or Services the subject of the Order or any extra work carried out by Electrician, these will be charged by Electrician at Electrician's standard rate from time to time and will be shown as variations in Electrician's tax invoice.

### 3. Price and Payment

- 3.1 The Price is payable in full without any deduction when the Goods or Services are supplied unless otherwise agreed in writing by Electrician. Time for payment of the Price is of the essence.
- 3.2 If the supply of Goods or Services is by credit, Client must have submitted a credit application which is approved in writing by Electrician. In that case, payment must be made in accordance with the terms of the credit application.
- 3.3 Client may be charged interest on any overdue amounts at the rate of 3% per annum above the then current cash rate target of the Reserve Bank of Australia, calculated daily from the day the payment became due until the day of full and final payment.
- 3.4 Client agrees to pay Electrician any expenses (including legal costs) incurred in collecting any outstanding debts due by client to Electrician.
- 3.5 Payment must be made by one of Electrician's accepted payment methods at the time payment of the Price is due. If payment is not by cash, then payment will not be deemed to have occurred until the full Price has been cleared and is available for Electrician's use.
- 3.6 This payment claim is made under the Building & Construction Industry Security of Payment Act - 1999

### 4. Supply of Goods and Services

- 4.1 Goods and Services will be supplied to Client's address on the quotation unless otherwise notified to Electrician by Client.
- 4.2 Client must ensure that there is clear and adequate access to the area where the Goods are to be delivered and the Services supplied. Electrician will not be liable for any loss or damage suffered by Client or its property as a result of inadequate access.
- 4.3 Electrician may deliver Goods or Services in instalments. If separate invoices are raised for each instalment Client must pay the invoice in accordance with the terms of this agreement and is not entitled to wait until all instalments of the Goods or Services have been supplied.
- 4.4 Electrician will use its best endeavours to supply Goods or Services in accordance with the quotation but will not be liable to Client for any delay in the supply of the Goods or Services no matter what reason, including negligence by Electrician.
- 4.5 Postponement of supply of Goods or Services by Client may incur an additional fee which will form part of the Price.

### 5. Title and risk

- 5.1 The risk of loss or damage to the Goods passes to Client when the Goods are delivered to the Client's address on the quotation or any other address notified to Electrician by Client.
- 5.2 Notwithstanding delivery of the Goods to Client, title in the Goods will not pass to Client until Client's payment has been processed or otherwise received by Electrician. If Client's payment is declined for any reason Electrician reserves the right to reclaim the Goods from Client's possession, custody or control even if they have been delivered to Client or moved from the delivery address. Electrician reserves the right to keep or sell the Goods.
- 5.3 This clause 5 creates a purchase money security interest for the purposes of the PPSA. To the extent permitted under the PPSA, Client agrees to contract out of the provisions listed in section 115 of the PPSA which impose a burden on Electrician. Client waives its right to be provided with verification statements under section 157 of the PPSA. Client and Electrician agree that neither will disclose to any third person information referred to in section 275(1) of the PPSA and that this is a confidentiality agreement for the purposes of section 275(6) of the PPSA.

### 6. Damaged or defective Goods

- 6.1 Client must inspect the Goods within 48 hours of delivery and if any Goods are damaged or defective Client must immediately notify Electrician in writing giving details of the defect or damage and Client will comply with all reasonable directions of Electrician in dealing with the Goods.
- 6.2 Nothing in this clause 6 is intended to effect or limit any guarantees which by law are implied into the agreement.
- 6.3 Electrician is not liable for any damage arising once the Goods have been delivered to Client or arising out of Client's handling, storing or other negligent act in relation to the Goods.

### 7. Warranty and Limitation of Liability

- 7.1 In relation to and Goods which are the subject of a manufacturer's warranty, Client agrees to comply with the terms of the manufacturer's warranty in the event there is a defect in the Goods.

- 7.2 To the extent permitted by law, all terms, guarantees, warranties, representations or conditions which are not expressly stated in this agreement are excluded. If Electrician is liable for a breach of an imposed term, guarantee, warranty, representation or condition or warranty, Electrician's liability is, at Electrician's option, limited to:

- (a) the replacement of the Goods or the supply of equivalent goods or the supply of the Services again;
- (b) the repair of the Goods;
- (c) the payment of the cost of replacing the Goods or acquiring equivalent goods; or
- (d) the payment of the cost of having the Goods repaired or having the Services supplied again.

- 7.3 To the extent permitted by law Electrician will not be liable for any special, indirect or consequential loss or damage, loss of profit or opportunity and loss of data arising out of or in connection with the Goods or Services, including as a result of the late or non-supply of Goods, whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.

### 8. Indemnity

- 8.1 Client indemnifies and keeps indemnified Electrician and its directors, agents and employees against all actions, claims, losses, liabilities, costs or expenses (including reasonable legal costs or expenses) which may be brought against or suffered or incurred by any of them, arising directly or indirectly out of or in relation to damage to the premises, the work site or any property of Electrician left at the Client's premises or in respect of injury to any person at Client's premises or as the result of a breach of this agreement by Client.

### 9. Intellectual Property Rights

- 9.1 Electrician owns or is the exclusive licensee of all Intellectual Property Rights in any drawings, specifications, diagrams or other materials created by Electrician for the purposes of supplying the Goods or Services.
- 9.2 Client warrants that any drawings, specifications, diagrams or other materials it supplies to Electrician will not infringe the Intellectual Property Rights of any third party.

### 10. Site issues

- 10.1 **Rock and filled ground:** unless otherwise agreed the supply of Services does not include the excavation, relocation, repair or removal of any rocks, surfaces or other obstructions which are necessary in order for Electrician to supply the Goods or Services.
- 10.2 **Restoration:** Electrician will take care when supplying the Goods or Services to minimise any disturbance or damage to surrounding areas including walls, ceilings, floors, garden beds and paint. Any repair or restoration required after the supply of the Goods or Services is not included in Electrician's quotation and must be carried out at Client's cost.

### 11. Description of work

- 11.1 Electrician's quotation is based on a visual inspection of Client's premises but the actual extent or nature of the Goods or Services to be supplied may not become apparent until work commences. Electrician reserves the right to vary the quotation once the supply of Goods or Services is commenced.
- 11.2 If Electrician considers it must vary the quotation, Electrician will immediately notify Client of the additional Goods or Services to be supplied and the estimated new Price. Client must notify Electrician within 7 days if it does not want Electrician to provide the Goods and Services in accordance with the revised quotation but Client will remain liable to pay Electrician for all Goods and Services supplied up to that date.

### 12. Termination

- 12.1 Either party may terminate this agreement immediately by notice to the other party:
  - (a) if the other party breaches a material term of this agreement capable of being remedied and fails to remedy the breach within 10 business days after being given notice of breach;
  - (b) if that other party breaches a material term of this agreement which is not capable of remedy; or
  - (c) the other party is unable to pay its debts as they fall due; makes or commences negotiations with a view to making a general rescheduling of its indebtedness, scheme of arrangement or composition with its creditors; or takes any corporate steps for its winding up or the appointment of a receiver, administrator or official manager over any of its revenue and assets.
- 12.2 If Client terminates this agreement for any reason whatsoever Client must immediately pay Electrician for all Goods or Services already ordered from or supplied by Electrician and Client is responsible for ensuring that its premises are secured and safe pending completion of the work by a third party.

### 13. Insurance

- 13.1 Electrician will take out and maintain all insurance it considers appropriate in respect of the supply of Goods and Services and all other insurances required by law including home warranty insurance.

### 14. General provisions

- 14.1 A notice given under this agreement must be in writing and sent to the recipient at the address specified in at the beginning of this agreement or such other address as notified from time to time.
- 14.2 If the performance of this agreement or any obligation under it is prevented, restricted or interfered with by reason of an act of God, fire, lightning, flood or other natural disaster, subsidence, power or gas shortage, inability or delay in obtaining any local government approvals, consents or permits or because of any industrial dispute of any kind or any other cause, whether similar or not to the foregoing, outside of the affected party's control, the affected party, upon giving prompt notice to the other party, is excused from such performance to the extent of such prevention, restriction or interference.
- 14.3 This agreement contains the entire agreement between the parties and can only be amended, supplemented, or waived in writing signed by both parties. The failure of either party to enforce, or the delayed by either party in enforcing, any of its rights shall not be deemed a continuing waiver or modification of this agreement.
- 14.4 This agreement is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of New South Wales.
- 14.5 If any clause or part of the clause is illegal, unenforceable or in valid, that clause or part is to be treated as removed from this agreement but the rest of the agreement is not affected.
- 14.6 Electrician may license or sub contract all or any of its obligations all rights without Client's consent.