

Standard Terms and Conditions (as at 1 September 2019)

These Standard Terms and Conditions will apply to all transactions between WAEE and the Customer relating to the provision of Products and/or Services. These Standard Terms and Conditions take precedence over any terms of trade contained in any document belonging to the Customer or elsewhere.

These Standard Terms and Conditions are available on our website www.waelectricalenterprises.com.au.

WAEE reserves the right to amend these Standard Terms and Conditions at any time.

1. DEFINITIONS AND INTERPRETATION

1.1 In these Standard Terms and Conditions:

- a) **Customer** means the purchaser of the Products/Services (or any person acting on behalf and with the authority of such person) as described in any Quote, Order or Invoice;
- b) **Force Majeure** means any cause or circumstance whatsoever outside the reasonable control of WAEE including (but not limited to) war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions or accidents of any kind;
- c) **Government Agency** means any government or any public, statutory, governmental (including local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organization established under statute;
- d) **GST** has the meaning given to that expression in the GST Act;
- e) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;
- f) **Intellectual Property Rights** means all present and future intellectual and industrial property rights in the Products and the provision of the Services conferred by Law and wherever existing including patents, designs, copyright, rights in circuit layouts, trademarks, know how, brand names, domain names, inventions, product names, trade secrets and any other rights subsisting in the results of any intellectual effort in any field, whether or not registered or capable of being registered;
- g) **Invoice** means a tax invoice issued by WAEE to the Customer for the Price;
- h) **Law** means principles of law or equity established by decisions of courts, statutes, regulations or by-laws of the Commonwealth of Australia or a Government Agency and requirements and approvals (including conditions) of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia or a Government Agency that have the force of law;
- i) **Order** means a purchase order or other request by the Customer for the supply of Products or Services by WAEE;
- j) **Personnel** means the employees, officers, agents and contractors of a person;
- k) **Price** means the price payable for the Products and/or Services;
- l) **Products** means goods supplied by WAEE as specified in an Order;
- m) **PPSA** means the *Personal Property Securities Act 2009 (Cth)*;
- n) **PPSA Proceeds** means all proceeds from any sale of, disposal of, or other dealing of any nature with the Products by the Customer including cash, cash equivalent and all present and after acquired property;
- o) **PPSA Security Interest** means a security interest as defined in the PPSA;
- p) **PPSR** means the Personal Property Securities Register;
- q) **Quote** means any document containing a price for Products including but not limited to quotations generated electronically or by hand;
- r) **Services** means delivery, installation, maintenance or other services to be provided by WAEE;
- s) **Site** means the site or sites specified in the Quote or Invoice or any other building, land or property at which the Services are to be performed as specified in the relevant Quote or Invoice; and
- t) **WAEE** means WA Electrical Enterprises Pty Ltd ABN 69 158 263 551.

1.2 Unless the context requires otherwise, in these Standard Terms and Conditions:

- a) the singular includes the plural and vice versa;
- b) headings are used for convenience only and do not affect the interpretation of these Standard Terms and Conditions;
- c) other grammatical forms of a defined word or expression have a corresponding meaning;
- d) a reference to a document is to that document as amended, novated, supplemented, extended or restated from time to time;
- e) a reference to a party is to either the Customer or WAEE and includes the party's executors, administrators, successors, permitted assigns and permitted substitutes;
- f) "person" includes a natural person, partnership, body corporate, association, joint venture, governmental or local authority, and any other body or entity whether incorporated or not;
- g) "month" means calendar month and "year" means 12 consecutive months;
- h) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) is to that statute as amended, consolidated, re-enacted or replaced from time to time;
- i) monetary amounts are stated in Australian currency unless otherwise specified;
- j) a reference to a time of day is to that time in Perth, Western Australia;
- k) a reference to any agency or body that ceases to exist, is reconstituted, renamed or replaced, or has its powers or functions removed (**defunct body**) is to the agency or body that performs most closely the powers or functions of the defunct body;
- l) any provision in these Standard Terms and Conditions which is in favour of more than one person benefits them all jointly and each of them severally; and

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m) any provision in these Standard Terms and Conditions which binds more than one person binds all of the jointly and each of them severally.

2. QUOTES

- 2.1 WAEE may provide the Customer with a Quote for the supply of any Products and/or Services.
- 2.2 Quotes are valid for 30 days from the date of issue.
- 2.3 WAEE is not obliged to commence any work pursuant to a Quote, until the Quote has been accepted by the Customer (either orally or in writing) and an Order has been placed by the Customer.
- 2.4 WAEE reserves the right, at WAEE's sole discretion, to withdraw or amend any Quote at any time before the Order has been completed to take into account any rise or fall in the cost of completing the Order. WAEE will notify the Customer of any amendment as soon as reasonably practicable, at which point the amended Quote will be the estimate.
- 2.5 Any specifications and descriptions contained in a Quote merely represent a general idea of a Product or Service, and WAEE reserves the right to make any changes to these materials that do not affect the purpose of the Product or Service.

3. DEPOSIT

WAEE may, at its sole discretion, request a 20% deposit to be paid by the Customer prior to the commencement of any work if:

- a) an Order amounts to \$1,000 or more; or
- b) non-standard materials need to be purchased in order to carry out the Services.

4. PRICE

All Prices are exclusive of GST unless otherwise stated. The Customer is required to pay GST in addition to the Price.

5. INVOICING AND PAYMENT

- 5.1 On or after the provision of the Products and/or Services by WAEE, WAEE will provide an Invoice to the Customer for the Price and the Customer must pay the amount invoiced by the due date specified in the Invoice. If no due date is specified, the Customer must pay the invoiced amount within 7 days after the date of the Invoice.
- 5.2 All payments made by credit card will incur a 1.9% merchant fee.
- 5.3 In the event that the Customer fails to make any payment to WAEE by the due date specified in the Invoice, without prejudice and in addition to WAEE's other rights as set out in these Standard Terms and Conditions and at Law:
 - a) WAEE may cease the supply of any Products and/or Services (as applicable) to the Customer; and
 - b) Interest on overdue amounts shall accrue daily from the date when payment becomes due, until the date of payment, at the rate of 2.5% per calendar month, compounded monthly; and
 - c) the Customer will indemnify WAEE from and against all costs and disbursements incurred by WAEE in pursuing a

debt including legal costs on a solicitor and own client basis and WAEE's collection agency costs.

- 5.4 An extension of time to pay any amount owing by the Customer to WAEE shall not be effective unless agreed to in writing by WAEE.
- 5.5 Unless otherwise agreed in writing, the Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owned to the Customer by WAEE, nor withhold payment of any Invoice because part of that Invoice is disputed.
- 5.6 To the extent permitted by Law, WAEE is entitled to withhold the issue of any compliance certificate to the Customer for Products and/or Services until payment has been received by WAEE in full.

6. TITLE & RISK

- 6.1 Risk in any Product passes from WAEE to the Customer upon delivery to Site. The Customer must ensure that the Product is insured following the passing of risk, until title to the Products passes to the Customer in accordance with Clause 6.2.
- 6.2 Title to the Products shall not pass to the Customer until full payment for the Products has been received by WAEE and until such time:
 - a) the Customer shall store and identify the Products so as to indicate they are the property of WAEE;
 - b) WAEE reserves the right to enter the Customer's premises (or the premises of any associated company or agent where the Products are located) without liability for trespass or any resulting damage and may retake possession of the Products;
 - c) the Customer acknowledges that should the Products be lawfully repossessed by WAEE, WAEE reserves the right to keep or resell the Products;
 - d) if the Products are resold to a third person by the Customer (**Sale**) and if from such Sale, the Customer received PPSA Proceeds in:
 - i) cash, the Customer must hold those PPSA Proceeds in a separate identifiable account on trust for WAEE and account those PPSA Proceeds to WAEE;
 - ii) a form other than cash, all such PPSA Proceeds must be held by the Customer on trust for WAEE and the Customer must store and identify the PPSA Proceeds so as to indicate they are the property of WAEE, and the Customer must continue to do so until all of its liabilities to WAEE have been satisfactorily discharged.
- 6.3 WAEE's property in the Products is not affected as a result of the Products becoming fixtures attached to the premises of the Customer or a third party.
- 6.4 Where WAEE enters a premises to reclaim possession of Products in accordance with this clause 6, and incurs any liability to any person, the Customer indemnifies WAEE against any such liability.

7. PPSA

- 7.1 Unless defined below or in clause 1, terms used in this clause 0 have the same meaning given to them in the PPSA.
- 7.2 To the extent permitted by Law, the Customer agrees that:

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- a) the provisions of clause 6 create a Security Interest granted by the Customer in favour of WAEE for the purposes of the PPSA; and
 - b) WAEE may register or give any notification in connection with its Security Interest and exercise its rights in connection with the Security Interest as a Purchase Money Security Interest and on an "Indefinite" basis in the PPSR in accordance with the PPSA.
- 7.3 The Customer must, at its expense, do anything that WAEE requires or considers necessary to:
- a) ensure that any Security Interest is enforceable, perfected and otherwise effective by WAEE;
 - b) register, or give any notification in connection with, any Security Interest in order to confer the priority that WAEE requires;
 - c) exercise WAEE's rights in connection with the Security Interest.
- 7.4 WAEE and the Customer contract out of sections 95, 96, 117, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA.
- 7.5 Where WAEE has rights in addition to, or existing separately from, those in Chapter 4 of the PPSA, those rights will continue to apply and are not limited or excluded or otherwise adversely affected by any right provided by this clause 0 or by Law.
- 7.6 If, in WAEE's opinion:
- a) these Standard Terms and Conditions or any transaction between the Customer and WAEE creates a Security Interest; or
 - b) the PPSA does or could affect WAEE's rights or obligations under these Standard Terms and Conditions, (each a **PPSA Event**), WAEE may, at its discretion, do any of the following:
 - c) register or give any notification in connection with any relevant Security Interest and exercise rights in connection with the Security Interest;
 - d) notify the Customer instructing it to do anything (at the Customer's expense) that it requires for the purposes of the relevant PPSA Event including, but not limited to executing any new document or agreement, obtaining consents and supplying information or procuring that the Customer's related entities do any such action, and the Customer must comply with any notice received pursuant to this clause 7.6 within the time stipulated in the notice.
- 7.7 If:
- a) any action referred to in clause 7.6 is not taken to WAEE's satisfaction; or
 - b) despite such action WAEE determines that its rights or obligations under or in connection with these Standard Terms and Conditions or any transaction hereunder have been, or will be, materially adversely affected, then WAEE may give notice to the Customer cancelling the Order or any other document in connection with the transactions and requiring:
 - c) full repayment of all outstanding monies; and
 - d) the return of all of WAEE's property within the control of the Customer,
- within 30 days after the date of notification.
- 7.8 The Customer irrevocably and unconditionally waive their right to receive from WAEE any notice under the PPSA (including notice of a Verification Statement) unless required by the PPSA and if the notice cannot be excluded.
- 7.9 The Customer must not register a Security Interest against WAEE without its prior written consent.
- 7.10 The Customer must notify WAEE immediately of any change in its name, address, and any other information provided to WAEE to enable WAEE to register a financing change statement under the PPSA if required.
- 7.11 The parties and their related entities agree that the subject matter referred to in section 275(1) of the PPSA is confidential and each party must not disclose any such information to a third party.
- 8. CUSTOMER'S OBLIGATIONS, ACKNOWLEDGEMENTS, REPRESENTATIONS AND WARRANTIES**
- 8.1 The Customer must:
- a) provide WAEE with all instructions, documentation and technical information necessary for WAEE to provide the Services;
 - b) ensure that WAEE and its Personnel have full access to the Site at all reasonable times for the purpose of providing the Services and performing WAEE's obligations hereunder; and
 - c) co-operate fully with WAEE and its Personnel and provide adequate facilities on the Site and all reasonable assistance to enable WAEE to perform its obligations hereunder.
- 8.2 The Customer warrants that it has full legal capacity and power to enter into this Agreement and to carry out the transactions that this Agreement contemplates.
- 8.3 The Customer warrants that it is not the subject of an insolvency event.
- 9. INSURANCE**
- WAEE will effect and maintain, at its own expense:
- a) Public liability insurance with a minimum cover of at least \$10 million per claim;
 - b) Workers compensation insurance; and
 - c) any other insurances that WAEE is required to effect under any Law.
- 10. WARRANTY**
- 10.1 The Customer acknowledges that it has satisfied itself that all Products and/or Services supplied by WAEE are suitable for the Customer's purpose and acknowledges that it has not relied on any warranty or representation from WAEE in this regard.
- 10.2 WAEE warrants that if any defect in any workmanship of any Service provided by WAEE becomes apparent and is reported to WAEE within 1 month of the date of delivery (time being of the essence) then WAEE will either, at its discretion, remedy or replace the Service, except where any defect or damage is caused directly or indirectly by:
- a) the Customer's failure to:
 - i) properly maintain or store any Product;

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- ii) follow any instructions or guidelines provided by WAEE;
 - iii) use any Product otherwise than for any applicable that was specified in the Quote or Order;
 - b) the Customer's continued use of any Product after the defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - c) fair wear and tear.
- 10.3 The warranty set out in clause 10.2 will cease and WAEE will not be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled by any person other than WAEE or its Personnel.
- 10.4 The Customer agrees that any matter relating to a manufacturer's warranty given in respect of any Products will be addressed directly with the manufacturer and WAEE gives no warranties as to the quality or suitability of Products.
- 10.5 WAEE is not liable to the Customer or any other person for any loss or damage of any kind to any goods or products supplied by the Customer and the Customer indemnifies WAEE from and against all such loss or damage.

11. LIMITATION OF LIABILITY

- 11.1 WAEE is not liable to the Customer or to any other person for:
- a) any loss or damage of any kind that is directly or indirectly caused by or results from any wrongful, willful or negligent act or omission of the Customer or any of its Personnel;
 - b) any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, loss of data or loss or damage resulting from wasted management time irrespective of whether the loss or damage is caused by or relates to a breach of contract, statute, tort (including negligence) or otherwise, or the Customer or any other person as previously notified of the possibility of the loss or damage.
- 11.2 Any representation, warranty, condition, guarantee or undertaking that would be implied into these Standard Terms and Conditions, or any Order, by legislation, common law, equity, trade, custom or usage is excluded to the fullest extent permitted by Law.
- 11.3 Nothing in these Standard Terms and Conditions excludes, restricts or modifies any consumer guarantee, right or remedy conferred on the Customer by the Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* or any other applicable Law that cannot be excluded, restricted or modified by agreement.
- 11.4 To the extent permitted by Law, WAEE's liability (if any) for breach of a non-excludable consumer guarantee referred to in clause 13.3 above is limited, at WAEE's option to the re-supply of the Products and/or Services or the cost of re-supplying the Products and/or Services.

12. INTELLECTUAL PROPERTY

- 12.1 The Customer acknowledges WAEE's title to, and interest in, all Intellectual Property Rights created through the provision of the Products and/or Services to the Customer. WAEE may grant the Customer a non-exclusive licence to use the

Intellectual Property Rights to use, enjoy and exploit the Products and Services.

- 12.2 The Customer warrants that all designs or instructions provided to WAEE will not cause WAEE to infringe any third party's intellectual property rights in the execution of the Order and the Customer agrees to indemnify WAEE against any and all loss incurred as a result of any such infringement.

13. FORCE MAJEURE

- 13.1 If a Force Majeure occurs, WAEE shall not be liable for any failure or delay in supply or delivery of Products and/or Services where such failure or delay is wholly or partly due to that Force Majeure.
- 13.2 In the case of a Force Majeure, the affected party must use its reasonable endeavours to remove, overcome or minimize the effects of that Force Majeure as quickly as reasonably possible. Nothing in this clause requires a party to settle any industrial dispute against its will.
- 13.3 WAEE will be entitled to deliver, and the Customer must take and pay for such part of the Products and/or Services as can be delivered, while the Force Majeure exists.

14. TERMINATION

- 14.1 WAEE may cancel an Order to which these Standard Terms and Conditions apply or cancel delivery of any Products and/or Services at any time prior to the Products or Services being delivered by giving notice in writing to the Customer. Upon giving such notice, WAEE will repay to the Customer any sums paid in respect of the Price. WAEE shall not be liable for any loss, damage or liability arising directly or indirectly from such cancellation.
- 14.2 In the event that the Customer cancels delivery of Products or Services, the Customer indemnifies WAEE for and against any and all loss incurred by WAEE (including, but not limited to, any loss of profits) up to the time of cancellation.

15. PRIVACY

- 15.1 The Customer acknowledges that:
- a) WAEE collects personal information such as contact details, bank account details, insurance details and credit card details and holds such information for 7 years. The purpose of collection of personal information is for internal use only;
 - b) personal information about the Customer may be disclosed to or acquired from or to a credit reporting agency; and
 - c) a copy of WAEE's privacy policy is available from WAEE upon written request.
- 15.2 The Customer hereby agrees in the event of default of payment of any amounts owing to WAEE by the Customer, WAEE may disclose all information relating to the Customer's account to its collection agency for the purpose of receiving any or all amounts outstanding.

16. GOVERNING LAW AND JURISDICTION

- 16.1 These Standard Terms and Conditions are governed by, and must be construed in accordance with the laws of Western Australia.

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- 16.2 The United Nations Convention on Contracts for the International Sale of Goods does not apply to these Standard Terms and Conditions.
- 16.3 The Customer agrees to submit to the non-exclusive jurisdiction of the courts of Western Australia.

17. GENERAL

- 17.1 Any provision of these Standard Terms and Conditions which is invalid in any jurisdiction must, in relation to that jurisdiction, be read down to the minimum extent necessary to achieve validity, if applicable (and severed from these Standard Terms and Conditions in any other case) without invalidating or affecting the remaining provisions of these Standard Terms and Conditions or the validity of that provision in any other jurisdiction.
- 17.2 WAEE may licence, assign or subcontract all or any part of its rights and obligations without the Customer's consent.
- 17.3 The failure of WAEE to enforce any provision under these Standard Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect WAEE's right to subsequently enforce that provision.
- 17.4 Each indemnity in these Standard Terms and Conditions:
- a) is a continuing obligation and survives the completion, expiry or termination of any Order;
 - b) is an additional, separate and independent obligation of the Customer and no one indemnity limits the operation of another indemnity;
 - c) WAEE may enforce and recover a payment under an indemnity in these Standard Terms and Conditions before it incurs any expense or makes the payment in respect of which the indemnity is given.
- 17.5 If there is a conflict between these Standard Terms and Conditions and any Quote or Invoice, then the provisions of these Standard Terms and Conditions prevail, unless expressly stated in the relevant Quote or Invoice.