

## DEFINITIONS AND INTERPRETATION

In these terms and conditions “we”, “our” and “us” means Intelligent Electrical Solutions.

- Customer means the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation, or other form provided by us to the Customer.
- Australian Consumer Law means Schedule 2 of the Competition and Consumer Act 2010 (Cth).
- Contract Price: means the amount as appears in the quotation, this agreement or price of the schedule plus any additional costs payable to us.
- Contract means these terms and conditions and the accompanying signed agreement.
- Goods means any goods supplied by us to the Customer (or ordered by the Customer but not yet supplied) including, and in no way limited to, electrical or communication products.
- Latent Conditions means any unforeseen site condition not obvious to us upon a reasonable inspection of the site at the time of the quotation, work authorisation, tender or other form.
- PMSI means a purchase money securities interest and has the meaning given in section 14 of the PPSA.
- Travel Time means the distance from our premises to the Customer and return.
- Works means the works described in this agreement or our quotation, work authorisation, tender or other form

## RATES

- The rates are as per our charges at the time the services are engaged, unless otherwise agreed.
- The rates do not include any allowance for Latent Conditions and we will be entitled to vary our price for the works for any such Latent Conditions.
- We are entitled to be reimbursed for any and all costs and charges levied by any statutory or other authority with respect to the Works we perform for the Customer.

## PAYMENT AND PAYMENT TERMS

- We require a 50% deposit of the Contract Price to be paid at the time of acceptance of the our quotation if the Price is more than \$1000. Goods shall not be ordered by the Contractor until receipt of the 50% deposit.
- A tax invoice for work and any delivery charges will be issued monthly unless the work is completed in less than a month.
- The following forms of payment are accepted: Visa, MasterCard, EFTPOS, cash or direct deposit.
- All payments to be by Australian Dollars unless stated otherwise.
- A surcharge may apply to credit card payments.
- The Customer is not entitled to any retention or otherwise retain any amount due to us. All payments are to be made without deduction or equitable or other set off whatsoever.
- The terms of trade are:

- 7 days from date of invoice; or
- as indicated on any tax invoice; or
- otherwise agreed by us in writing.
- The Customer may be liable to pay interest on any late payment at the cash rate of interest last set by the Reserve Bank of Australia from time to time, plus 6% per annum.
- We reserve the right to suspend the Works if payment is overdue until such time as payment is made.
- In the event that it is necessary to engage solicitors and / or a debt collection agency as a consequence of any late payment or any other breach of these terms, then the Customer agrees to pay all legal costs on a solicitor / client basis and all collection costs.

### **DELIVERY, TITLE AND PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)**

- The Customer assumes the risk for Goods at the time of delivery, whether the Goods are delivered to the Customer's premises or other site nominated by the Customer and whether the Customer (or the Customer's representative) is at the delivery site to acknowledge receipt of delivery. The Customer agrees to pay standard delivery charges as invoiced.
- Ownership of the Goods will only pass to the Customer when all monies owed to us by the Customer are paid in full.
- Until ownership of the Goods passes to the Customer in accordance with clause 4.2, it is further agreed that we have:
  1. the right to enter the delivery site and retake possession of the Goods ;
  2. the right to keep or resell any Goods repossessed under sub-clause 4.3.1 and
  3. any other rights at law or under the PPSA.
- Until we receive payment for all monies owed to us, the Customer acknowledges that we have a PMSI which attaches over the Goods and their proceeds and a security interest in relation to other amounts owed by the Customer to us.
- The Customer acknowledges that the Contract constitutes a security agreement for the purposes of the PPSA.
- The Customer undertakes to do anything (such as obtaining consents, producing documents or getting documents completed or signed) which we consider reasonably necessary for the purposes of ensuring that a PMSI and/or security interest is enforceable, perfected and effective.
- To the extent permitted by law, the Customer waives its rights to:
  1. receive notices or statements under sections 95 118,, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;
  2. redeem the Goods under section 142 of the PPSA;
  3. reinstate the security agreement under section 143 of the PPSA;
  4. receive a Verification Statement as defined in the PPSA.
- Nothing in this clause prevents us from taking collection or legal action to recover any monies owed to us from time to time.

### **VARIATIONS AND CHANGES TO COST OF MATERIALS**

- The Customer shall be entitled to direct that we undertake a variation and such direction shall be in writing and if we are delayed, then the Customer will grant us an extension of time and reimburse us our reasonable delay costs and the Contract Price shall be adjusted accordingly.
- We shall be entitled to be reimbursed any additional costs as a consequence of any increase in material costs that exceed 5% of the original cost of such materials at the time of the award of the Contract.

### **EXTENSION OF TIME**

- We shall be entitled to an extension of time and our reasonable cost recovery for delay if we, through no fault of our own, are delayed by others.

### **PURCHASE ORDERS**

- Only these terms (not other terms and conditions which may be attached to or incorporated in a purchase order) form part of the agreement between us and the Customer. Our acceptance of a purchase order will not be acceptance of any such terms or conditions.

### **RETURNS AND CANCELLATIONS**

- Cancellations for custom made Goods will not be accepted once we have commenced ordering and/or manufacturing the Goods (including any components required to manufacture the Goods.)
- Except when incorrectly supplied or faulty, the Customer will be responsible for payment of any return freight charges.

### **LATENT CONDITIONS**

- We shall be entitled to an extension of time and our reasonable delay costs, if any, and reimbursed all costs arising out of any Latent Conditions.

### **PRODUCT AND SERVICE GUARANTEE, REPAIRS AND WARRANTY**

- You are entitled to a replacement or refund for a major failure and for compensation for reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality.
- You agree that our liability to you for any breach of any implied terms is, subject to the Australian Consumer Law, limited to the replacement or repair, or payment of the cost of replacement or repair of the relevant Goods.
  1. You acknowledge that (at our option):
  2. Goods for which the Customer is entitled to have repaired may be replaced by refurbished goods of the same type rather than being repaired.
  3. Refurbished parts may be used to repair Goods.

- All Goods and services supplied by us shall have the benefit of any warranty given by the Good's respective manufacturer. Subject to your rights under the Australian Consumer Law and to the fullest extent permitted by law, you agree that we will not be liable to you for loss of profit or other economic loss, direct or indirect, or consequential, special, general or other damages or other expenses or costs arising out of a breach or contract or any common law duty (including negligence) by us, our agents or employees.
- Further, subject to the Australian Consumer Law, we will not be liable for any damage, (indirect, direct or consequential) arising out of any faults or defects including, but not limited to, those caused by:
  1. External causes including natural disaster, fire, water, lightning, power surge or spike, accident, neglect, misuse, vandalism.
  2. The use of the Goods for other than its intended purpose.
  3. The use with or connection of the Goods to item/s not approved by us.
  4. The performance of maintenance or attempted repair by person/s other than us or as authorised by us.
  5. Any configuration or reconfiguration by the Customer.
- No liability is assumed for any consequential damages caused from the use of Goods by the Customer.
- The Customer is responsible for any return freight charges for Goods that are returned under warranty.
- All equipment and materials supplied are covered by the manufacturer's warranty and must be installed, operated, and maintained in accordance with the manufacturer's instructions and guidelines.
- A workmanship warranty of 5 years applies to all labour carried out. This warranty covers defects arising from installation workmanship only and does not extend to faults caused by misuse, neglect, modifications, or external factors beyond our control.
- Any warranty claims must be reported promptly upon discovery of the issue.

### **CONTRACTOR LIABILITY**

- We shall not be liable for any damage caused by the Customer or third parties and shall not be required to indemnify any party for any damage caused by others.
- Subject to the Australian Consumer Law, unless otherwise provided by this Contract, we will not accept the return of, or give credit for, any Goods supplied in accordance with the Contract.
- We will not be liable for any delays caused by others.
- Subject to the Australian Consumer Law, we will not be liable for any consequential or indirect losses.

### **INSURANCE**

- All Professional Indemnity and all risks/control works insurances are expressly excluded unless otherwise noted in the Schedule.

## **SITE AND SAFETY**

- The Customer shall be responsible for the site.
- The Customer shall ensure that all legislation and standards applicable to workplace safety are adhered to on the site.
- We shall comply with all legislation and standards in the maintaining of safe work practices.

## **EXCAVATIONS & EXISTING UNDERGROUND SERVICES**

- The Contract is based on any excavation required in performance of the Works being in soil or clay and free of rock. The Customer acknowledges that should it be necessary for us to excavate in other material, including but not limited to rock and shale, then such shall be a Latent Condition and the Customer will pay to us a reasonable extra price.
- We shall ring "Dial Before You Dig" prior to any excavation.
- We shall be entitled to rely on the "Dial Before You Dig" report being conclusive and binding on the parties.
- If the Customer requires us to excavate by hand:
  1. we shall be entitled to an extension of time;
  2. we shall be entitled to our reasonable costs for any resulting delay;
  3. we shall be entitled to payment for such excavation at our hourly rates.
- If the Customer fails to give us relevant site information and we, through no fault of our own, cause damage to any service, then the Customer shall indemnify and forever hold harmless us from any and all claims for damages made against us.

## **ASBESTOS AND OTHER TOXIC SUBSTANCES**

- We shall be entitled to an extension of time and our reasonable delay costs and any other additional costs incurred by us as a consequence of the presence of asbestos or other toxic substances whatsoever.

## **INDUSTRIAL RELATIONS**

- We shall comply with all applicable industrial instruments and allowances.
- We shall be entitled to an extension of time and be reimbursed all costs incurred as a consequence of any change to any industrial relation matter after the award of the Contract.

## **CONFIDENTIALITY**

- The parties shall, except for legal and other advisors, keep strictly confidential between them all information shared under the Contract.