

Leahys Electrical Contracting Pty Ltd

ABN: 66 076 629 313

TERMS AND CONDITIONS

(Goods and Services)

The Company will provide, and the Customer will acquire the Goods and/or Services in accordance with these Terms and Conditions.

These Terms and Conditions supersedes all previous Terms and Conditions.

1. DEFINITIONS

In the interpretation of these terms the following shall have the meanings set forth below unless otherwise indicated:

Goods means each and every article or thing specified in the Purchase Order and/or Quotation as to be purchased by the Customer.

Business Day means any day that is not a Saturday, Sunday or public holiday in Victoria.

Company means Leahys Electrical Contracting Pty Ltd trading as Leahys Electrical Services which is contracted to supply the Goods and/or Services indicated in the Purchase Order and/or Quote.

Contract means the contract comprising these Terms and Conditions, the Company's quotation, the Customer's Purchase Order and any credit approval and/or guarantee required to be provided by the Customer to the Company.

Customer means the individual or entity with whom the Company has entered into a contract for the supply of Goods and/or Services pursuant to these Terms and Conditions.

Delivery Address means the delivery address as stipulated on any Purchase Orders or Quotations.

Event of Force Majeure means the occurrence of an event or circumstances beyond the reasonable control of a Party affected by it including (without limitation):

- (a) a war (declared or undeclared), insurrection, civil commotion, military action, or an act of sabotage;
- (b) a strike, lockout or industrial action, dispute or disturbance of any kind;
- (c) an act of a government or an authority;
- (d) an act of God;
- (e) a storm, tempest, fire, flood, earthquake or other natural calamity; or
- (f) a plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions.

"GST", "Taxable Supply" and "Tax Invoice" have the same meanings as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Party means the Customer or Company, and Parties means both of them.

Purchase Order means a document entitled "Purchase Order" or "Service Order" which is issued by the Customer to the Company.

Services means the services specified in the Purchase Order and the provision of all materials and equipment, necessary to allow or assist the performance of the Services.

Site means the site which the Company may be required to perform the Services.

2. Interpretation

In these Terms and Conditions, headings are for convenience only and shall not affect its interpretation. Except to the extent that the context otherwise requires:

- (a) reference to any statute or statutory provision shall include any modification or re-enactment of, or any legislative provisions substituted for, and all legislation and statutory instruments issued under such legislation or such provision;
- (b) words denoting the singular shall include the plural and vice versa;
- (c) words denoting individuals shall include corporations, associations, trustees, instrumentalities and partnerships and vice versa;
- (d) words denoting any gender shall include all genders;
- (e) references to any document, deed or agreement shall include references to such document, deed or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (f) references to any party to the Contract or any other document, deed or agreement shall include, in the case of a company, its successors, administrators and/or permitted assigns and, in the case of a natural person, his representatives and permitted assigns;
- (h) all references to dates and times are to Melbourne time;
- (i) all references to "\$" and "dollars" are to the lawful currency of Australia.

3. QUOTATIONS, ORDERS AND DELIVERY

Quotations

- 3.1 No quotation given by the Company to the Customer shall constitute an offer.
- 3.2 Prices given in any quotation by the Company are applicable to that quotation only and will not apply in any other instance.
- 3.3 Quotations issued by the Company remains valid for thirty (30) days from date of issue (unless otherwise specified in the quotation). After this time the Company reserves the right to revise the quotation.
- 3.4 Completion and/or Delivery Dates, where indicated on the Quotation or any other document is an estimate only, and no damages will arise if the Goods and/or Services are not delivered and/or completed by the Delivery and/or Completion Dates.

Orders

- 3.5 The Customer shall request Goods and/or Services from the Company via a Purchase Order, stipulating a requested Delivery Date and specifying a Delivery Address.
- 3.6 Any Purchase Order from the Customer to the Company for the supply of Goods and/or Services shall not be binding upon the Company until accepted by the Company.
- 3.7 A contract shall only be or be deemed to have been entered into between the Company and the Customer for the supply of Goods and/or Services when the Customer's Purchase Order has been accepted by the Company in writing or where the Company starts performing the works.
- 3.8 These Terms and Conditions apply to the Customer and to the Company in respect of Goods and/or Services ordered by the Customer and any terms and conditions set out in the Customer's Purchase Order deviating from or inconsistent with these Terms and Conditions will not bind the Company notwithstanding any statement by the Customer in its Purchase Order that its terms and conditions shall prevail over these Terms and Conditions.

- 3.9 Completion Date, where indicated on the Purchase Order or as requested by the Customer via other means (e.g. email, verbally or otherwise), is an estimate only, and no damages will arise if the Goods and/or Services are not completed by the Completion Date.

Delivery

- 3.10 All quoted delivery or consignment dates are estimates only.
 - 3.11 If the Company becomes aware of the likelihood of delay in delivery and/or provision of the Goods that are the subject of a Quotation/Purchase Order beyond the Delivery Date, the Company will notify the Customer of the delay and when delivery and/or provision is anticipated.
 - 3.12 Should the Customer delay delivery of the Goods, the Company reserves the right to store the Goods and to obtain payment as though the Goods had been delivered and to recover storage, insurance and handling costs incurred due to the delay. The Company shall be entitled to make progress claims when Goods and/or Services are required ahead of scheduled delivery dates or when payment in full for the Goods and/or Services will be delayed.
 - 3.13 Risk in the Goods and/or Services and all insurance responsibility for theft, damage or otherwise passes to the Customer at the time of delivery to the Delivery Address.
 - 3.14 Acceptance of the Goods must take place immediately following delivery and is established if the Customer signifies by words or conduct that the goods are conforming or that the Customer retains them in spite of their nonconformity or deal with them in a way inconsistent with its ownership.
- 4. PAYMENTS**
- 4.1 Other than to the extent expressly set out as a separate component(s) in a Purchase Order and/or Quotation, pricing quoted in a Quotation is exclusive of GST, and inclusive of other indirect taxes and all other applicable taxes, duties, imports, insurance costs, fees or costs imposed by governmental authorities, transportation and delivery charges, in each case relating to the Purchase Order and/or Quotation.
 - 4.2 Within five (5) Business Days of delivering the Goods and/or providing the Services, the Company will invoice the Customer for all Goods delivered and Services supplied by the Company to the Customer under this Contract.
 - 4.3 The Company's payment terms are:
 - a. For Commercial Customers thirty (30) days from the date of invoice;
 - b. For Residential Customers seven (7) days from the date of invoice.

Property and Ownership

- 4.4 Property and ownership in the Goods will not pass to the Customer but will remain in the Company until payment in full of the purchase price of the Goods and/or Services and all other amounts owing to the Company by the Customer is made.
 - 4.5 To protect the Company's security interest in the Goods until payment the Company may choose to register the Contract between the Company and the Customer under the Personal Property Securities Act 2009. The Customer agrees to do all things necessary to facilitate such registration.
 - 4.6 The Company reserves the following rights in relation to the Goods until all amounts owed by the Customer to the Company are fully paid:
 - (a) legal and equitable ownership of the Goods;
 - (b) to enter the Customer's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and
 - (c) to keep or resell any of the Goods repossessed pursuant to (b) above.
 - 4.7 The Customer must so long as the Company is entitled to the property in the Goods, store the Goods so that they are clearly identifiable as the property of the Company.
 - 4.8 The full purchase price of the Goods and/or Services and any additional charges will become immediately due and payable if the Customer takes or has taken against it any action or proceeding, whether voluntary or compulsory, which could result in the winding up of the Customer.
 - 4.9 In the event that the Goods are resold, or goods manufactured using the Goods are sold, by the Customer, the Customer holds on trust such part of the proceeds of any such sale as represents the invoice price of the Goods sold or used in the manufacture of the Goods sold in a separate identifiable account as the beneficial property of the Company and must pay such amount to the Company upon request. Notwithstanding the provisions above the Company is entitled to maintain an action against the Customer for the purchase price of the Goods and/or Services.
 - 4.10 If the payment of the Goods is not made by the Customer by the due date specified in the invoice by the Company to the Customer then the Customer shall return the Goods to the Company upon demand. If the Customer does not return the Goods to the Company within 48 hours of receipt of the demand, the Company shall be entitled to enter upon the Customer's premises at any time to do all things necessary to recover the Goods. The Customer shall be liable for all costs associated with the exercise by the Company of its rights under this clause, which shall be repayable upon demand.
 - 4.11 The Customer shall be liable for all costs of whatsoever nature of and associated with the exercise of the Company's rights under this clause, which costs shall be payable on demand.
 - 4.12 Should the Customer sell the Goods to any sub-purchaser, the Customer must obtain a specific acknowledgement from the sub-purchaser that property and ownership in the Goods will not pass to the sub-purchaser but will remain with the Company until payment in full of the purchase price of the Goods by the sub-purchaser to the Customer.
- Interest**
- 4.13 Interest is payable on any amounts owing by the Customer from the due date of payment until the date that payment is received at a rate of 5% higher than the rate prescribed by the *Penalty Interest Rate Act 1983 (Vic)* calculated daily and compounded monthly.

Recovery Costs

- 4.14 The Customer shall pay all legal and administrative costs and expenses incurred by the Company, its legal advisers, agents and others in respect of overdue accounts or anything instituted or being considered against the Customer, whether for debt or otherwise.

5. PROGRESS CLAIMS

The Company reserves the right to issue progress claim invoices as Goods are supplied and certain Services are completed and will issue a final invoice on finalisation of the work. Such progress claims will clearly define work completed or Goods made available. Payment is to be made by the Customer in accordance with these Terms and Conditions.

6. PRICE VARIATION

- 6.1 In the event of an increase in the cost to the Company of supplying the Goods and/or Services, the price quoted will be subject to variations following acceptance of the Purchase Order. This may arise from, but is not limited to:
 - (a) a variation in the weekly hours of work laid down under a relevant award or the rate of pay under the relevant award; or
 - (b) an increase in the cost of materials outside of the Company's control; or
 - (c) delays in installation as a result of instructions/action/inaction or lack thereof from the Customer, or the Customer's failure or inability to fulfil its obligations which result in increased costs to the Company; or
 - (d) additional works required due to the discovery of hidden or unidentifiable difficulties (including but not limited to, poor weather conditions, limitations to accessing the Site, site specific conditions, availability of machinery, safety considerations, prerequisite work by any third party not being completed, etc.) which are only discovered on commencement of the Services; or

- (e) any existing electrical infrastructure that is non-compliant or unsafe.
- 6.2 GST or Import Duty (if any) or any other taxes or duties included in the quotation are based on the rate applicable on all the items as at the date of the quotation. All variations, whether they be due to amendments of the relevant Acts or changes in interpretations of classifications, will be payable by the Customer and will be added to the quoted price.
- 6.3 Variations to rates of exchange, freight, insurance, primage and cartage on imported equipment or components, affecting the amount paid by the Company for the actual Goods or components supplied will also be payable by the Customer and will be added to the quoted price.
- 6.4 The Company shall advise the Customer of any such variation arising from this clause that may affect the value of any incomplete work to which the variation has been applied.
- 7. DEFAULT OF THE CUSTOMER**
- 7.1 Should the Customer fail to make due payment for any Goods supplied by the Company or commit a breach of any term of the sale, or being a natural person commit an act of bankruptcy, or being a corporation by act or omission enables the appointment of an administrator, scheme manager, trustee, official manager, receiver, receiver and manager, liquidator or any other person authorised to enter into possession or assume control of any property of the Customer pursuant to a mortgage or other security, the Company may, without prejudice to any other rights it may have, do any or all of the following -
- (a) Withdraw any credit facilities which may have been extended to the Customer and require immediate payment of all moneys owing or accrued;
- (b) Withhold any further deliveries of Goods or performance of Services required under the accepted order;
- (c) In respect of Goods already delivered, enter into the Customer's premises to recover and resell same for its own benefit;
- (d) Suspend and/or terminate performance of any other contracts which the Company has with the Customer.
- 7.2 A certificate, signed by the Director, Accountant, Credit Controller or other authorised person of the Company, stating the sum due and payable by the Customer under the contract at the date mentioned in that certificate, will be prima facie evidence that the sum so stated is the sum due and payable by the Customer to the Company under the contract at the date. Without limiting clause 4.14, the cost of collection of any monies due and payable, including but not exclusively the fees of any mercantile agent or solicitor engaged by the Company will be recoverable on a full indemnity basis against the Customer.
- 8. CANCELLATION AND MODIFICATIONS**
- 8.1 Orders may not be altered or cancelled without the written consent of the Company. If the Company agrees to alter or cancel the order, the Customer shall indemnify the Company against any loss, damage and expense incurred by the Company in relation to the cancellation or alteration of that order including the cost of return freight, return shipping to factory of origin, items purchased from third parties for inclusion in Goods and all labour and engineering costs incurred by the Company in the execution or part execution of the Goods and including compensation payable to any supplier of the Company and loss of profit.
- 8.2 If the Company is asked to carry out additions or modifications to the Goods and/or perform additional Services or more frequent Services than those set out in either the Company's quotation or the Customer's Purchase Order (whichever is dated later), these will be deemed a variation and the quotation will be adjusted accordingly. Any variation will take into consideration the nature and extent of such additions or modifications and the cost the Company incurs in performing these, but (subject to this) all other conditions of the Contract will continue to apply.
- 8.3 Changes to the Quotation or Purchase Order (e.g. seeking an increase in quantity or additional services) at the Customer's request after the formation of a Contract, will only be accepted at the Company's discretion and will only take effect when agreed in writing and signed by a duly authorised signatory of the Customer.
- 8.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 9. PRODUCT CHANGE**
- The Company reserves the right to make reasonable modifications in Goods of any kind without notice and to deliver revised designs or models of Goods against any order unless the right is specifically waived by the Company in writing. Prior to making modifications of a major nature which may affect the Customer in its contractual responsibilities, such modifications will be referred to the Customer for acceptance.
- 10. INTELLECTUAL PROPERTY**
- 10.1 Where the Company has designed, drawn, or created any products for the Customer, then the copyright in all such designs, drawings, documents, products shall remain vested in the Company, and shall only be used by the Customer at the Company's discretion.
- 10.2 The Customer warrants that all designs, specifications or instructions given to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Company against any action taken by a third party against the Company in respect of any such infringement.
- 10.3 The Customer agrees that the Company may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which the Company has created for the Customer.
- 11. GOODS AND SERVICES TAX**
- 11.1 All prices are exclusive of GST, unless otherwise specifically stated.
- 11.2 In addition to the price of Goods and any other charges it is entitled to make to the Customer, the Company shall be entitled to charge the Customer the amount of any sales tax, goods and service tax, excise, value added or other tax, impost or duty payable by the Company in respect of the Goods whether or not included in the Company's invoice.
- 12. WARRANTIES AND INDEMNITIES**
- 12.1 Service Warranty: Unless otherwise noted, warranty for labour service is thirty (30) days from the date of service. Warranty on parts is thirty (30) days.
- 12.2 Where the Goods are manufactured by a third party or the Goods include products manufactured by a third party, any warranty which may be given by the Company only applies to the extent the Company receives the benefit of that third party manufacturer's warranty, except otherwise agreed in writing by the Company.
- 13. DISPUTE RESOLUTION**
- The parties will negotiate to resolve any disputes. If a dispute cannot be resolved within 14 days of first being notified, either party may commence proceedings.
- 14. INSURANCE**
- The Company will, for so long as any obligations remain in connection with these Terms and Conditions, effect and maintain appropriate insurance policies.
- 15. LIMITATION OF LIABILITY**
- 15.1 The Customer acknowledges and agrees that the Company has no liability in contract, tort (including negligence or breach of statutory duty), by statute or otherwise for loss or damage (whether direct or indirect) of profits, opportunity, revenue, goodwill, bargain, production, contracts, business or anticipated savings, corruption or destruction of data or for any indirect, special or consequential loss or damage whatsoever.
- 15.2 Notwithstanding any other provision to the contrary, the Company will not be responsible or liable for any breach of warranty or claim where such breach or claim arises as a result of:
- (a) damage after delivery, incorrect installation or incorrect operational procedures caused or contributed by the Customer or a third party;
- (b) refrigerant lost during shipment or during any warranty period; or
- (c) mechanical or electrical overload, abrasion, erosion, corrosion, chemicals, energy supply, foreign materials, deterioration due to extremes of environment, normal wear and tear or any other event or cause beyond the control of the Company.
- 15.3 This clause 15 does not exclude or modify any condition or warranty implied into the contract or these Terms and Conditions by any law (including the *Trade Practices Act, 1974*) where to do so would contravene that law or cause any part of this clause to be void.
- 15.4 To the maximum extent permitted by law, the Company excludes all conditions and warranties implied into these Terms and Conditions and limits its liability for breach of any non-excludable condition and warranty, at the Company's option, to:
- (a) in respect of Goods:
- (i) repairing the relevant Goods;
- (ii) paying the cost of having the relevant Goods repaired;
- (iii) resupplying the relevant Goods or equivalent Goods; or
- (iv) paying the cost of having the relevant Goods or equivalent Goods resupplied;
- (b) in respect of Services:
- (i) resupplying the relevant Services; or
- (ii) paying for the cost of having the relevant Services resupplied.
- 15.5 The Company's total liability under any contract and these Terms and Conditions shall not exceed the total dollar amount of the Goods and/or Services purchased by the Customer under the contract.
- 16. FORCE MAJEURE**
- Neither Party shall be liable for any delay or default in the performance of its obligations under this Contract caused by an Event of Force Majeure. That Party shall, for the duration of such event, be relieved of any obligation under this Contract that is affected by the event provided that that Party shall use its best efforts to cure such event (if curable) and to comply with each of its obligations as soon as any such event ceases to affect the performance of each of its obligations.
- 17. BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT 2002**
- 17.1 At the Company's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the *Building and Construction Industry Security of Payment Act 2002* may apply.
- 17.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the *Building and Construction Industry Security of Payment Act 2002* of Victoria.
- 18. APPLICABLE LAWS**
- This Contract is governed by and construed in accordance with the laws of Victoria and each of the Parties submits to the non-exclusive jurisdiction of the courts exercising jurisdiction there.
- 19. ENTIRE UNDERSTANDING**
- 19.1 These Terms and Conditions constitute the full and complete understanding between the Parties with respect to its subject matter.
- 19.2 All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of the contract are merged in and superseded by these Terms and Conditions and shall be of no force or effect whatever and neither party shall be liable to the other party in respect of those matters.
- 19.3 Where there is more than one Customer then the liability of each shall be joint and several.
- 19.4 The contract shall be binding on the heirs, successors and assigns of the parties.
- 19.5 No variation, waiver or cancellation of the contract will be effective unless such variation, waiver or cancellation is expressly accepted and is in writing.
- 19.6 If any term or condition is unenforceable it shall be read down so as to be enforceable or, if it cannot be read down, the term or condition shall be severed from these Terms without affecting the enforceability of the remaining Terms.
- 19.7 Any additions to these Terms and Conditions shall be in writing and included as Special Conditions in the Purchase Order. In the event of any inconsistency between these Terms and Conditions and any Special Conditions, the latter shall prevail.
- 19.8 These Terms do not create an exclusive relationship between the Company and the Customer in respect of the provision of the Goods and/or Services.