



## **TERMS & CONDITIONS**

### **Payment terms**

1. The terms of payment are strictly thirty (30) days (or such other period as nominated by the supplier herein) from the date of invoice and payment is due and payable on that date. Go Electrical Pty Ltd ABN 56 118 931 070 and its related bodies corporate (as that term is defined in the *Corporations Act 2001* (**Supplier**)) may, at any time, unilaterally vary the terms of trade in its absolute and unfettered discretion.

2. Should the Applicant not pay for the goods or services supplied by the Supplier in accordance with the credit terms as provided herein, or as agreed in writing by the Supplier from time to time, the Supplier shall be entitled to charge an administration fee of 10 percent of the amount of the invoice payable per year, or part thereof, from the date the goods or services were supplied (and not the day when the Supplier's invoice was payable) until payment by the Applicant.

### **Jurisdiction**

3. The Applicant acknowledges and agrees that this agreement shall be governed by the laws of New South Wales, and the laws of the Commonwealth of Australia which are in force in New South Wales.

4. The Applicant acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Applicant is formed at the address of the Supplier.

5. The parties to this agreement submit to the non-exclusive jurisdiction of the courts of New South Wales and the relevant federal courts and courts competent to hear appeals from those courts.

### **Security/charges**

6. The Applicant charges in favour of the Supplier all of its estate and interest in any real property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.

7. The Applicant charges in favour of the Supplier all of its estate and interest in any personal property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.

8. The Applicant appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Applicant's name and as the Applicant's act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Applicant may own in any Land Titles Office in any state or territory of Australia, even though the Applicant may not have defaulted in carrying out its obligations hereunder.

### **Purpose of credit**

9. The Applicant acknowledges and agrees that the credit to be provided to the Applicant by the Supplier is to be applied wholly or predominantly for commercial purposes.

### **Formation of contract**

10. Quotations made by the Supplier shall not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it. Only written acceptance by the Supplier of the Applicant's offer shall complete a contract.

11. Placement of an order, either verbally or in writing, shall imply acceptance of the Supplier's offer and of these terms and conditions.

### **Information and drawings**

12. All descriptive specifications, illustrations, drawings, data, dimensions and weights

give to the Applicant are approximately only, are intended to be general descriptions only, and do not form grounds for any claim against the Supplier.

13. Descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of the contract of sale.

14. Where the Applicant supplies specifications, drawings or other particulars, the Supplier's quotation is calculated on estimates of quantities required. If adjustments to this estimate are necessary, the quotation will be adjusted proportionally.

#### **Delivery**

15. The Supplier accepts no responsibility either to deliver or to load goods at the point of dispatch, and the costs of transport to the Applicant's premises is at the Applicant's expense.

16. The Supplier is deemed to have delivered the goods as soon as the Applicant is notified they are ready for delivery, at which point risk, and liability for loss and damage, is deemed to have passed to the Applicant, and pay is due accordingly.

17. If the Supplier elects to arrange delivery, it is at the Applicant's cost and risk. However, if the Supplier elects in writing to assume responsibility for the transport of the goods, the Supplier shall, at its option, repair or replace free of charge any goods lost or damaged in transit to the agreed point of delivery, provided the Supplier is given written notice of such loss or damage within three (3) days of delivery or within such shorter time as to enable it to comply with the carrier's conditions of carriage.

18. The Supplier is not responsible for unloading the goods at the point of delivery.

19. Any delivery or completion dates or times stated are estimates only and the Supplier shall not be held liable for any consequences whatsoever, including loss and damage, for any delay, suspension or extension to such times.

20. Where applicable, delivery will be made in accordance with a written delivery schedule, mutually agreed between the Supplier and the Applicant at the time of placing the order.

21. Unless amendments to the delivery schedule are given by the Applicant in sufficient time to alter the production program, and the Supplier has agreed to such amendments in writing, the Supplier reserves its right to continue to deliver according to schedule.

22. The Supplier is deemed to have delivered the goods if it obtains a receipt or signed delivery dockets for the goods from any person at the nominated address for delivery, and payment is due accordingly.

23. The Applicant is deemed to have waived any claim for shortage of any goods delivered if a claim in respect thereof has not been lodged with the Supplier within three (3) days from the date of delivery of the goods.

24. If the Applicant is unable to accept deliveries on site, at the Applicant's risk and expense the Supplier may elect to either deliver to the Applicant's store or place the goods in storage. In either event, delivery is deemed to have occurred on site and payment is due accordingly.

25. All charges relating to storage, insurance, handling and subsequent delivery to the site will be charged directly to the Applicant's account.

26. The Supplier may elect to supply goods in instalments, and these conditions shall apply to each supply of goods by instalments as if each instalment constituted supply under a separate agreement, and in particular, the Applicant will pay the Supplier for each instalment of goods so supplied irrespective of any failure to delay in the supply of any other instalment of goods.

27. The Supplier reserves its right to refuse to deliver any goods if the Applicant has any monies outstanding beyond the date for payment on any account with the Supplier.

#### **Goods returned for credit**

28. The Supplier will not consider a claim in relation to damaged goods or shortage of length, quality or weight unless notified in writing within three (3) days of delivery.

29. The Supplier may allow credits at its sole discretion, but in any event it will not accept goods for credit after thirty (30) days from the date of original invoice for

account customers and cash customers fourteen (14) days.

30. 'Special buy-ins' will be subject to the manufacturers and/or Supplier's conditions and fee structure.

31. The Supplier reserves the right to charge a restocking fee on goods accepted for credit.

32. In all cases, the Applicant must quote the original invoice or delivery docket and must prepay return freight.

33. Goods returned for credit must be accompanied by the original invoice or delivery docket and must be in the original pack and in a completely resalable condition.

#### **Retention of title**

34. Whilst the Applicant has not paid for the goods supplied in full at any time, the Applicant agrees that property and title in the goods shall not pass to the Applicant and the Supplier retains the legal and equitable title in those goods supplied and not yet sold.

35. Until payment in full has been made to the Supplier, the Applicant will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and shall not mix the goods with other similar goods.

36. The Applicant shall be entitled to sell the goods in the ordinary course of its business, but until full payment for the goods has been made to the Supplier, the Applicant shall sell as agent and bailee for the Supplier and the proceeds of sale of the goods shall be held by the Applicant on trust for the Supplier absolutely.

37. The Applicant's indebtedness to the Supplier, whether in full or in part, shall not be discharged by the operation of clause 36 hereof unless and until the funds held on trust are remitted to the Supplier.

38. The Applicant agrees that whilst property and title in the goods remains with the Supplier, the Supplier has the right, with or without prior notice to the Applicant, to enter upon any premises occupied by the Applicant (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Applicant) to inspect the goods of the Supplier and to repossess the goods which may be in the Applicant's possession, custody or control when payment is overdue.

39. The Applicant will be responsible for the Supplier's costs and expenses in exercising its rights under clause 38. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Applicant against the Supplier, its employees, servants or agents.

40. The Applicant agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Applicant on those goods, and the Applicant hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Applicant.

41. For the avoidance of doubt, the Supplier's interest constitutes a 'purchase money security interest' pursuant to the *Personal Property Securities Act 2009*.

#### **Cancellation of terms of credit**

42. The Supplier reserves the right to withdraw credit at any time, whether the Applicant is in default under the terms of this agreement or not.

43. Upon cancellation with or without notice all liabilities incurred by the Applicant become immediately due and payable to the Supplier.

#### **Indemnity**

44. The Applicant agrees to indemnify the Supplier and keep the Supplier indemnified against any claim. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.

#### **Provision of further information**

45. The Applicant undertakes to comply with any request by the Supplier to provide further information for the purpose of assessing the Applicant's creditworthiness, including an updated credit application.

46. If the Applicant is a corporation (with the exception of a public listed company), it must advise the Supplier of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Supplier may ask for new guarantors to sign a guarantee and indemnity.

#### **Corporations**

47. If the Applicant is a corporation, the Applicant warrants that all of its directors have signed this agreement and that all of its directors will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.

#### **Trustee capacity**

48. If the Applicant is the trustee of a trust (whether disclosed to the Supplier or not), the Applicant warrants to the Supplier that:

- (a) the Applicant enters into this agreement in both its capacity as trustee and in its personal capacity;
- (b) the Applicant has the right to be indemnified out of trust assets;
- (c) the Applicant has the power under the trust deed to sign this agreement; and
- (d) the Applicant will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.

49. The Applicant must give the Supplier a copy of the trust deed upon request.

#### **Partnership**

50. If the Applicant enters into this agreement as partners, the Applicant warrants that all of the partners have signed this agreement and that all of the partners will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.

51. If the Applicant is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity.

#### **Insolvency**

52. If the Applicant becomes insolvent, the Applicant remains liable under this agreement for payment of all liabilities incurred hereunder. The Applicant remains liable under this agreement even if the Supplier receives a dividend or payment as a result of the Applicant being insolvent.

#### **Waiver**

53. A waiver of any provision or breach of this agreement by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this agreement by the Applicant must be made by the Applicant's authorised officer in writing.

#### **Costs**

54. The Applicant must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Applicant. The Applicant must also pay for all stamp duty and other taxes payable on this agreement (if any).

55. The Applicant will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Applicant, including debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Applicant to the Supplier irrespective of whether pursuit of the recovery action, claim or remedy is successful.

56. The Applicant acknowledges and agrees that payments by the Applicant will be applied by the Supplier as follows.

- (a) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 38 and 55.
- (b) Secondly, in payment of any interest incurred in accordance with clause 59.
- (c) Thirdly, in payment of the outstanding invoice(s).

#### **Taxes and duty**

57. The Applicant must pay GST on any taxable supply made by the Supplier to the Applicant under this agreement. The payment of GST is in addition to any other

consideration payable by the Applicant for a taxable supply.

58. If as a result of:

- (a) any legislation becoming applicable to the subject matter of this agreement; or
- (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;

the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Applicant, then the Applicant must pay the Supplier these additional amounts on demand.

#### **Interest rates**

59. The interest rate on any outstanding debts is a fixed rate of 15 percent per annum.

#### **Attorney provision**

60. The Applicant appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Applicant's name and as the Applicant's act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Applicant may own in any Land Titles Office in any State or Territory of Australia, even though the Applicant may not have defaulted in carrying out its obligations hereunder.

#### **Set-off**

61. All payments required to be made by the Applicant under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding.

62. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Applicant by the Supplier.

#### **Miscellaneous**

63. The Supplier is not liable for any loss caused to the Applicant by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's control.

64. In relation to the supply of goods, the Supplier's liability is limited to:

- (a) replacing the goods or supplying similar goods;
  - (b) repairing the goods;
  - (c) providing the cost for replacing the goods or for acquiring equivalent goods;
- and
- (d) providing the cost for having the goods repaired.

65. In relation to the supply of services, the Supplier's liability is limited to:

- (a) supplying the service again; or
- (b) providing for the cost of having the services supplied again.

66. The Supplier is not liable, whether claims are made or not, for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Applicant.

#### **Severance**

67. If any provision of this agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.

68. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

#### **Variation**

69. The Applicant agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Applicant.

70. Any proposed variation to these terms and conditions by the Applicant must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.

#### **Consent to register**

71. The Applicant hereby consents to the Supplier recording the details of this Agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by the Supplier to effect such registration.

72. The Applicant waives any right it may have to receive a notice of the registration of

the security interest(s) granted to the Supplier, by the Applicant.

**Entire agreement**

73. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.

**Privacy Act**

74. The Applicant agrees to the terms of the *Privacy Act 1988* authorisation contained in this document.

**PRIVACY ACT 1988 AUTHORISATION**

To enable the Supplier to assess the credit application or to review any existing credit, the Applicant and Guarantors authorise the Supplier to obtain:

1. from a credit reporting agency a credit report containing personal information about the Applicant and Guarantors in relation to credit provided by the Supplier (section 18K(1)(a) of the *Privacy Act 1988*);
2. a report from a credit reporting agency containing personal information about the Applicant and the Guarantors (section 18K(1)(b) of the *Privacy Act 1988*); and
3. a report containing information about the Applicant's and the Guarantors' commercial activities or commercial credit worthiness from a business which provides information about the commercial credit worthiness of a person or an entity in relation to credit provided by the Supplier (section 18L (4) of the *Privacy Act 1988*).

The Applicant authorises the Supplier to provide certain personal information about the Applicant under section 18E(8)(c) of the *Privacy Act 1988*. The information which may be given to an

agency is covered by section 18E(1) of the *Privacy Act 1988* and includes:

1. the fact that application for credit has been made;
2. the fact that the Supplier is a credit provider to the Applicant
3. payments which become overdue more than 60 days;
4. advice that payments are no longer overdue;
5. cheques drawn by the Applicant in excess of \$100 that have been dishonoured more than once;
6. in specified circumstances, that in the opinion of the Supplier the Applicant has committed a serious credit infringement;
7. that the credit provided to the Applicant by the Supplier has been discharged.

In accordance with section 18N(1)(b) of the *Privacy Act 1988*, the Applicant authorises the Supplier to give and obtain from credit providers named in this credit application and credit

providers that may be named in a credit report issued by a credit reporting agency information about the Applicant's credit arrangement. The Applicant acknowledges that the information can

include any information about the Applicant's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the

*Privacy Act 1988*.

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