

1 Reading Guide

- 1.1 Accepted Order means any actual supply of Goods or Services by the Supplier to the Client
- 1.2 ACL means the Australian Consumer Laws.
- 1.3 Approved Payment Method means a payment by cash, cheque, bank cheque, electronic banking or credit card.
- 1.4 Client means the Business Enterprise set out in this Credit Application.
- 1.5 Consequential Loss means the loss or expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay or any consequential special or indirect loss or damage whether or not the possibility of potential extended loss or damage was known or foreseeable and whether arising from a claim under indemnity contract tort (excluding negligence) statute or otherwise.
- 1.6 Credit Account means the credit given by the Supplier to the Client if this Credit Application is accepted.
- 1.7 Credit Terms means these terms and conditions.
- 1.8 Goods means all Goods or Services supplied by the Supplier to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.9 Insolvency Event means, for the Client, as applicable, being in liquidation or provisional liquidation, bankruptcy or under administration, having a controller (as defined in the Corporations Act 2001) or analogous person appointed to the Client or any of the Client's property, being taken under Section 459F(1) of the Corporations Act to have failed to comply with the statutory demand, being unable to pay the Client's debts, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing the Client's own affairs for any reason, take any steps that could result in the Client becoming an insolvent under administration (as defined in Section 9 of the Corporations Act 2001), entering into a compromise or arrangement with or assignment for the benefit of any of the Client's members or creditors or any analogous event.
- 1.10 Payment Date means 30 days from the end of the month in which the Accepted Order occurs.
- 1.11 PPSA means the Personal Properties Securities Act 2009 and PPSR means the Register created by that Act.
- 1.12 Supplier means The Electrical Co Australia Pty Ltd ACN 604 900 218 its successors and assigns or any person acting on behalf of and with its authority.
- 1.13 Supply Terms means any terms and conditions of quotation and supply notified by the Supplier to the Client (whether on an invoice, quotation, order form, through the Supplier's website, docket or otherwise) or supply agreement (howsoever described) in the Supplier's then standard form entered into in writing between the Supplier and the Client.

2 Credit

- 2.1 The Client applies to the Supplier to purchase Goods and Services on credit on these Credit Terms. Where there is an Accepted Order on credit, the Supply Terms will apply together with these Credit Terms but any inconsistent terms and conditions relating to credit in the Supply Terms are expressly excluded.
- 2.2 The Client authorises the Supplier to open on its books a Credit Account in the Client's name and to debit to the Credit Account:
 - (a) the price of an Accepted Order; and

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(b) all other amounts owed by the Client to the Supplier.

2.3 The Supplier may in its sole discretion:

(a) refuse this Credit Application;

(b) close the Credit Account without prior notice;

(c) withhold the supply of Goods or Services whether an order has been accepted or not if for any reason the Supplier determines that no further credit is to be extended to the Client until full payment of the Credit Account and that order; and

(d) vary the Credit Terms by the Supplier on giving the Client written notice and unless the Client within seven (7) days closes its Credit Account or in that time places a new order the new Credit Terms shall apply to any Approved Orders from then.

3 Credit Account

3.1 The Credit Account and the Account Number given to the Client (if any) must only be used by the Client and cannot be assigned, transferred or made available for use by any other entity or person (or by a subsequent purchaser of the Client) without the Supplier's prior written consent.

3.2 The Client must pay to the Supplier the full amount debited to the Credit Account by the Payment Date whether or not the Supplier has delivered a monthly statement to the Client.

3.3 The payment of the Credit Account may be made by cash, cheque, bank cheque, electronic banking, credit card (plus the surcharge of 1.5%).

3.4 If the Client fails to pay any amount by the Payment Date it will incur interest at a rate of 5% above the Reserve Bank Cash Rate calculated daily and compounded monthly but in no circumstances will the interest charge exceed 20% per annum.

3.5 The Client agrees to pay all costs and expenses (including legal costs, commissions paid by the Supplier to any commercial or mercantile agent and the sign off fees) incurred by the Supplier in connection with the recovery of any moneys due and owing by the Client to the Supplier including enforcing the charge in clause 12.

3.6 The Client must pay the Supplier the full amount debited to the Credit Account immediately on demand if the Client fails to comply with or is in breach of these Credit Terms or the Supply Terms, suffers an insolvency event or makes any misrepresentation to the Supplier.

3.7 A statement signed by an authorised person for the Supplier stating the sum due and owing by the Client to the Supplier as at the date specified in the statement shall be a conclusive statement and will be binding on the parties in the absence of a patent error, or until a contrary is proven.

4 Cancellation

4.1 The Supplier may cancel any order or quotation or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On the giving such notice the Supplier shall repay to the Client any money paid by the Client for the Goods or Services but shall not be liable for any loss or damage whatsoever suffered by the Client arising from any cancellation.

4.2 In the event that the Client cancels the delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).

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- 4.3 Cancellation of orders by the Client for Goods made, developed or grown to the Client's specifications, or for non-stocklist items, will not be accepted by the Supplier once the order has been placed.

5 Warranties and Acknowledgements

- 5.1 The Client (and the persons signing the Credit Application) warrant that:
- (a) it (and those persons) is solvent and able to pay its debts on time;
 - (b) it shall give written notice to the Supplier if it suffers an insolvency event;
 - (c) it (and those persons) has a good credit history and nothing has occurred that could lead to an Insolvency Event;
 - (d) that all the information given to the Supplier is true and correct;
 - (e) it has legal capacity to enter into these Credit Terms; and
 - (f) where the Client is a trustee of a trust that all Accepted Orders will be for the purposes of the trust and that the Client is, and will be, entitled to have resort to the trust assets to satisfy the balance of the Credit Account and that the trustee's right of indemnity against the trust or the trust fund is not, and will not be, excluded and that nor shall the Client release that right of indemnity without the Supplier's prior written consent.
- 5.2 The Client (and the persons signing the Credit Application) acknowledge and agree that:
- (a) the failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision;
 - (b) if any part of these Credit Terms is void or unenforceable, it may be severed without affecting the enforceability of any other part;
 - (c) a breach of these Credit Terms is a breach of the Supply Terms;
 - (d) subject to clause 9 the Supplier shall be under no liability whatsoever to the Client for any indirect or consequential loss or expense (including loss of profit) suffered by the Client arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods);
 - (e) the Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute;
 - (f) the Supplier may license or sub-contract all or any part of its rights and obligations without the Client's consent;
 - (g) the Credit Terms form part of the Supply Terms where necessary and to the extent of any inconsistency the Credit Terms shall prevail;
 - (h) it must pay any stamp duty assessed on this document or the transactions contemplated by it or fee to any Register or maintain any security interest held or to be held by the Supplier under these Credit Terms; and
 - (i) the Client shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change affecting the structure, management, ownership or control of the Client including its ACN, ABN or any details required on the PPSR or any other change in the Client's Contact Details.

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6 Risk

- 6.1 The risk of any loss or damage to or deterioration of the Goods from any cause whatsoever passes from the Supplier to the Client when the Client takes possession of the Goods or otherwise if:
- (a) the Client collects the Goods and if the Supplier or its contractors have loaded the Goods for the Client, when the Goods are fully loaded onto the Client's vehicle or vessel;
 - (b) the Supplier delivers the Goods to the Delivery Site and the Client unloads the Goods, when the Client begins unloading the Goods;
 - (c) the Supplier delivers the Goods and unloads them at the Delivery Site, when the Supplier has finished unloading the Goods; or
 - (d) the Client requests the Supplier to deliver the Goods to an unattended location or the Delivery Site is closed when the Goods are unloaded and they will be left there at the Client's risk.
- 6.2 If any of the Goods are damaged after risk has passed to, but prior to ownership passing to, the Client the Supplier is entitled to receive the proceeds of any insurance claim whether the policy is owned by the Supplier or the Client who assigns that benefit to the Supplier.

7 Exclusion of Implied Terms

- 7.1 The Client may have the benefit of consumer guarantees under the ACL and otherwise, to the maximum extent permitted by law, all terms conditions or warranties that would be implied into these Credit Terms or the Supplier's Terms and Conditions or in connection with the supply of any Goods or Services by the Supplier under law or statute or custom or international convention are excluded.

8 Limitation of Liability under ACL Guarantees

- 8.1 To the extent that Goods supplied by the Supplier are not Goods of a kind ordinarily acquired for personal, domestic or household use and the Client is deemed to be a consumer for the purpose of Section 64A of the ACL, the Client agrees that the Supplier's liability for a failure to comply with a consumer guarantee that the Client may have a benefit of under the ACL (other than a guarantee under Sections 51 (Title), 52 (Undisturbed Possession) and 53 (Undisclosed Securities) is limited to at the option to the Supplier to one or more of these:
- (a) replacement of the Goods or the Supply of equivalent Goods;
 - (b) the repair of the Goods;
 - (c) the payment of the costs of replacing the Goods or of acquiring equivalent Goods; or
 - (d) equivalent Goods or payment of the costs of having the Goods repaired.
- 8.2 To the extent that the Services provided by the Supplier are Services other than Services of a kind ordinarily required for personal, domestic or household use or consumption, the Supplier's liability for failure to comply with the consumer guarantee that the Client may have the benefit of is limited to, at the option of the Supplier:
- (a) the supply of the Services again; or
 - (b) the payment of the fair cost of having the Services provided again.

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9 Limitation of Liability

9.1 To the maximum extent permitted by law and subject to clauses 7 and 8 the Supplier's total liability arising out of or in connection with its performance or its obligations pursuant to these Credit Terms or the Supply Terms arising out of or in connection with the supply of specific Goods or Services (including pursuant to or for any breach of the Terms or repudiation of those, under statute, in equity or for tort, including negligent acts or omissions) is limited as follows:

- (a) the Supplier shall have no liability to the Client to any Consequential Loss;
- (b) the Supplier's total aggregate liability for loss, however arising shall not exceed the GST exclusive aggregate price paid by the Client to the Supplier for the specific Goods or Services that gave rise to the loss in question. Limitation exclusions in this clause do not apply to the extent that any loss is directly attributable to:
 - (i) the personal injury or death caused by the Supplier's default, breach of these Credit Terms or negligence; or
 - (ii) fraud by the Supplier.

9.2 Each party must take reasonable steps to mitigate any loss it suffers or incurs.

10 Title

10.1 The Supplier retains legal and equitable title in any Goods supplied to the Client until the Credit Account next has a zero balance and until then the Client may sell such Goods or use the Goods in a manufacturing or construction process in the ordinary course of the Client's business for true market value but as between the Client and the Buyer of the Goods, the Client sells as principal and not as the agent of the Supplier. The proceeds of any such sale must be held by the Client in a separate fund on trust for the Supplier and the Client is under a duty to account to the Supplier for those proceeds. The creation of, or any failure of, any such trust shall not in any way limit the obligation of the Client to pay the Supplier for the Goods.

10.2 Until the Goods are sold or used in a manufacturing construction process, the Client must keep the Goods safe and free from deterioration, loss or harm and clearly designate the Goods as the property of the Supplier and keep full and complete records of the physical location of the Goods and the ownership of the Goods by the Supplier.

10.3 The Supplier is irrevocably entitled to, at any time, and from time to time before any sale of any of the Goods by the Client to enter any of the Client's premises, vehicles or vessels to inspect or to recover and retake possession of the Goods and otherwise in relation to the Goods exercise any of its rights whether those rights are as owner or unpaid seller or otherwise and whether those rights are conferred by common law, contract, statute or any way. If the Goods are held by a third party then the Client shall obtain the consent of that third party so that the Supplier may exercise its rights under this clause and shall indemnify the Supplier and its agents from any liability arising from the exercise of those rights.

10.4 The reservation of title and ownership is effected whether or not the Goods have been altered from their supplied form or comingled with other Goods.

11 Personal Property Securities Act 2009 ("PPSA")

11.1 The Supplier's rights set out in these Credit Terms or the Supply Terms where applicable constitute the grant of a purchase money security interest (PMSI) by the Client in favour of the Supplier for the purposes of the PPSA.

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- 11.2 The Client must immediately, if requested by the Supplier sign any documents, provide all necessary information and do anything else required by the Supplier to ensure that the Suppliers PMSI is a perfected security interest under the PPSA.
- 11.3 The Client will not enter into any security agreement that permits any other person to have or to register any security interests in respect of the Goods or any proceeds from the sale of the Goods until the Supplier has perfected its PMSI under the PPSA.
- 11.4 In this clause collateral, financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 11.5 Upon assenting to these Credit Terms in writing the Client acknowledges and agrees that these Credit Terms constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods or collateral being a monetary obligation of the Client to the Supplier for Services that have previously been supplied and that will be supplied in the future by the Supplier to the Client.
- 11.6 The Client undertakes to:
- (a) promptly sign any further documents or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the PPSR;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in this sub-clause;
 - (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any Goods so charged;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or collateral in favour of a third party without the prior written consent of the Supplier;
 - (e) immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 11.7 The Supplier and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Credit Terms.
- 11.8 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.9 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.10 Unless otherwise agreed to in writing by the Supplier, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.11 The Client must unconditionally ratify any actions taken by the Supplier under clauses 11.6 to 11.8.
- 11.12 Subject to any express provisions to the contrary nothing in these Credit Terms is intended to have the effect of contracting out of any of the provisions of the PPSA.

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12 Security and Charge

- 12.1 The Client charges all of the Client's right, title and interest in all present and after-acquired property and present and after-acquired land held by the Client, to secure the payment of all amounts due and payable under the Credit Account (Secured Monies). The Client consents to the Supplier lodging a caveat or caveats or to registering the Supplier's security interest on the PPSR to note the Supplier's interest under this clause.
- 12.2 On demand by the Supplier, the Client will immediately provide any information, or do any action required by the Supplier, including executing a mortgage or any other instrument of security, in terms satisfactory to the Supplier, to further secure payment of the Secured Monies.
- 12.3 The Client hereby irrevocably appoints the Supplier, and any person nominated by the Supplier, severally the attorney of the Client with power to execute, sign, seal and deliver (which delivery may be subject to such terms and conditions as the attorney thinks fit) such mortgage or other document to give effect to this security.
- 12.4 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.

13 Intellectual Property

- 13.1 All intellectual property created by the Supplier relating to the Goods or Services is from the time of the creation owned by the Supplier.
- 13.2 The Supplier grants to the Client a non exclusive royalty free licence to use the Supplier's intellectual property to the extent that such materials form part of or are integral to the Goods or Services and the Client must not remove any branding, patent, copyright or other proprietary notices of the Supplier on the Goods unless the Client first obtains the prior written consent of the Supplier.
- 13.3 If the Client provides the Supplier with any design, writing, drawing or specifications that are used in regards to the Goods or Services the Client warrants that the use of them will not cause the Supplier to infringe any third party's rights and agree to indemnify the Supplier against any action taken by a third party in respect of any alleged rights.
- 13.4 If anything referred to in clause 13.3 is given by the Client to the Supplier the Client gives the Supplier ownership to those things and if that cannot be given both the moral rights in those things and the exclusive right to make a commercial use of them.

14 GST

- 14.1 If the Supplier has any liability to pay Goods and Services Tax (GST) on the supply of any Goods or Services to the Client, the Client must pay the Supplier an amount equivalent to the GST liability of the Supplier at the same time as the consideration is paid for the Goods or Services (unless the consideration for that Supply is expressed specifically to be GST inclusive).

15 Privacy

- 15.1 The Supplier will comply with the Australian Privacy Principles in all dealings with the Client.
- 15.2 The Supplier may need to collect personal information about the Client and, if applicable its Directors, including but not limited to full names and addresses, drivers licence details, credit card details, dates of birth and credit or business history (the Personal Information).

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- 15.3 The Client consents to the Supplier using the Personal Information in order to:
- (a) satisfy itself as to the Client's credit worthiness or exercising the Supplier's rights under clauses 11 and 12;
 - (b) provide Goods and Services to the Client;
 - (c) prevent the theft of the Goods;
 - (d) enter into contracts with the Client or third parties; and
 - (e) market to the Client and maintain a client relationship with the Client.
- 15.4 The Client consents to the Supplier disclosing the Personal Information:
- (a) to any credit provider or credit reporting agency for the purpose of obtaining or giving information about the Client including its credit or business history or the Client's commercial activities or creditworthiness generally;
 - (b) to the Supplier's service providers, contractors and affiliated companies from time to time to help improve and market the Supplier's services to the Client; and
 - (c) to any lawyers or mercantile agents to enforce any of the Supplier's rights against the Client or to any prospective guarantor if the Client proposes a replacement or additional guarantor.
- 15.5 The Client has a right to access the Personal Information the Supplier holds about the Client and copies of the Supplier's Credit Product Privacy Policy and Credit Reporting Policy are available upon written request made to the Supplier.

16 Claim for Payment

- 16.1 If applicable a claim for moneys owed under these Credit Terms are a claim for payment under the Building Constructions and Payments Act 2004 (QLD) and the Building and Construction Industry Security of Payment Act 1999 (NSW) and the Construction Contracts Act 2004 (WA).

17 General

- 17.1 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 17.2 Electronic signatures shall be accepted providing that the persons signing have complied with the Electronic Transactions (Queensland) Act 2001.
- 17.3 These Credit Terms and any contract, agreement or transaction to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Southport, Queensland.