



Terms and Conditions of Quotation:

1. Definitions

- 1.1 "MKE" means Matt Keene Electrical Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Matt Keene Electrical Pty Ltd.
- 1.2 "Client" means the person/s buying the Goods as specified in any invoice, document, or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by MKE 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).
- 1.4 "Price" means the Price payable for the Goods as agreed between MKE and the Client in accordance with clause below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with MKE's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and MKE.

3. Change in Control

- 3.1 The Client shall give MKE not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by MKE as a result of the Client's failure to comply with this clause.

4. Price and Payment

- 4.1 At MKE's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by MKE to the Client; or
 - (b) MKE's quoted price (subject to clause) which will be valid for the period stated in the quotation or otherwise for a period of twenty-eight (28) days.
- 4.2 MKE reserves the right to change the Price:
 - (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, obscured building defects, prerequisite work by any third party not being completed, change of design, hidden pipes and wiring in walls etc) which are only discovered on commencement of the Services; or

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- (d) In the event of increases to MKE in the cost of labour or materials which are beyond MKE's control.
- 4.3 At MKE's sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by MKE, which may be:
- (a) on delivery of the Goods.
 - (b) by way of instalments/progress payments in accordance with MKE's payment schedule.
 - (c) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices.
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by MKE.
- 4.5 Payment may be made by cash, bank cheque, electronic/on-line banking, *, or by any other method as agreed to between the Client and MKE.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to MKE an amount equal to any GST MKE must pay for any supply by MKE under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 4.7 A deposit of 10% is required by the client before commencement of any work.
- 4.8 A deposit of 50% for purchase of equipment by the client maybe required before work will commence.
- 5. Hourly rate \$100.00 + GST**
- 6. Urgent electrical call out (within working hours) between \$187.00 - \$287.00 + GST**
- 6.1 An afterhours callout will incur a minimum 4hrs x \$95.25 = \$381.00 + GST.**
- 6.2 Additional charge for parts.**
- 7. Delivery and Installation of Goods**
- 7.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that MKE (or MKE's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 7.2 At MKE's sole discretion the cost of delivery is included in the Price.
- 7.3 Any time or date given by MKE to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and MKE will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.
- 7.4 The Client shall provide, at the Client's cost, mains power connection so as to enable installation and/or service work to be undertaken at the premises.
- 7.5 Any telecommunications connection required for the installation and/or maintenance of Goods to be supplied will be arranged and paid for by the Client unless otherwise agreed in writing.
- 8. Risk**
- 8.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, MKE is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by MKE is sufficient evidence of MKE's rights to receive the insurance proceeds without the need for any person dealing with MKE to make further enquiries.
- 8.3 Where MKE gives advice or recommendations to the Client, or the Client's agent, with specific instructions regarding the use of the Goods and such advice or recommendations are not acted upon then MKE shall not be liable in any way whatsoever for any damages or

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- losses that occur after any subsequent commencement of the Services.
- 8.4 The Client warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and that any electrical connections (including, but not

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limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Goods once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring or dangerous access to roofing) that MKE, its employees or MKE's reasonably form the opinion that the Client's premises is not safe for the installation of Goods to proceed then MKE shall be entitled to delay installation of the Goods (in accordance with the provisions of clause above) until MKE is satisfied that it is safe for the installation to proceed.

8.5 The Client accepts that electronic fire protection systems, smoke, heat and like detectors installed to / at their premises are for monitoring and detection purposes and should not be seen as a life saving device.

8.6 It shall be the Client's responsibility:

(a) to ensure the fire protection system equipment is tested and maintained to full operational condition; and

(b) to ensure all electronically protected areas are free from obstacles which may impair the operation of the system.

9. Access

9.1 The Client shall ensure that MKE has clear and free access to the work site at all times to enable them to undertake the Services. MKE shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of MKE.

10. Underground Locations

10.1 Prior to MKE commencing any work the Client must advise MKE of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

10.2 Whilst MKE will take all care to avoid damage to any underground services the Client agrees to indemnify MKE in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause.

11. Client's Responsibilities

11.1 The Client acknowledges that in the event asbestos, or any other toxic substances are discovered at the worksite that it is their responsibility to ensure the safe removal of the same. The Client further agrees to indemnify MKE against any costs incurred by MKE as a consequence of such discovery. Under no circumstances will MKE handle removal of asbestos product.

12. Title

12.1 MKE and the Client agree that ownership of the Goods shall not pass until: (a) the Client has paid MKE all amounts owing to MKE; and (b) the Client has met all of its other obligations to MKE.

12.2 Receipt by MKE of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honored, cleared or recognized.

12.3 It is further agreed that:

(a) until ownership of the Goods passes to the Client in accordance with clause that the Client is only a bailee of the Goods and must return the Goods to MKE on request.

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- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for MKE and must pay to MKE the proceeds of any insurance in the event of the Goods being lost, damaged, or destroyed.
- (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes, or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for MKE and must pay or deliver the proceeds to MKE on demand.
- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of MKE and must sell, dispose of, or return the resulting product to MKE as it so directs.
- (e) the Client irrevocably authorizes MKE to enter any premises where MKE believes the Goods are kept and recover possession of the Goods.
- (f) MKE may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of MKE.
- (h) MKE may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

13. Personal Property Securities Act 2009 ("PPSA")

- 13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 13.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by MKE to the Client.
- 13.3 The Client undertakes to:
 - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which MKE may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause or
 - (b) indemnify, and upon demand reimburse, MKE for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of MKE;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of MKE;
 - (e) immediately advise MKE 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.
- 13.4 MKE and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 13.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
 - 13.7 Unless otherwise agreed to in writing by MKE, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
 - 13.8 The Client must unconditionally ratify any actions taken by MKE under clauses to

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13.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

14. Security and Charge

- 14.1 In consideration of MKE agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Client indemnifies MKE from and against all MKE's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising MKE's rights under this clause.
- 14.3 The Client irrevocably appoints MKE and each director of MKE as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause including, but not limited to, signing any document on the Client's behalf.

15. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 15.1 The Client must inspect the Goods on delivery and must within five (5) days of delivery notify MKE in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow MKE to inspect the Goods.
- 15.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non- Excluded Guarantees**).
- 15.3 MKE acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, MKE makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. MKE's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Client is a consumer within the meaning of the CCA, MKE's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If MKE is required to replace the Goods under this clause or the CCA, but is unable to do so, MKE may refund any money the Client has paid for the Goods.
- 15.7 If the Client is not a consumer within the meaning of the CCA, MKE's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by MKE at MKE's sole discretion;
 - (b) limited to any warranty to which MKE is entitled, if MKE did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 15.8 Subject to this clause, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause; and
 - (b) MKE has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 15.9 Notwithstanding clauses to but subject to the CCA, MKE shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods;

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- (b) the Client using the Goods for any purpose other than that for which they were designed;
- (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) the Client failing to follow any instructions or guidelines provided by MKE; (e) fair wear and tear, any accident, or act of God.

15.10 MKE may in its absolute discretion accept non-defective Goods for return in which case MKE may require the Client to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.

15.11 Notwithstanding anything contained in this clause if MKE is required by a law to accept a return then MKE will only accept a return on the conditions imposed by that law.

16. Intellectual Property

- 16.1 Where MKE has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of MKE.
- 16.2 The Client warrants that all designs, specifications or instructions given to MKE will not cause MKE to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify MKE against any action taken by a third party against MKE in respect of any such infringement.
- 16.3 The Client agrees that MKE may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which MKE has created for the Client.

17. Default and Consequences of Default

- 17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of fifteen and a half percent (15.5%) per annum (and at MKE's sole discretion such interest shall compound annually at such a rate) after as well as before any judgment.
- 17.2 If the Client owes MKE any money the Client shall indemnify MKE from and against all costs and disbursements incurred by MKE in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, MKE's collection agency costs, and bank dishonour fees).
- 17.3 Without prejudice to any other remedies MKE may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions MKE may suspend or terminate the supply of Goods to the Client. MKE will not be liable to the Client for any loss or damage the Client suffers because MKE has exercised its rights under this clause.
- 17.4 Without prejudice to MKE's other remedies at law MKE shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to MKE shall, whether or not due for payment, become immediately payable if:
 - (a) any money payable to MKE becomes overdue, or in MKE's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

18. Compliance with Laws

- 18.1 The Client and MKE shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.

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- 18.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 18.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

19. Cancellation

- 19.1 MKE may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice MKE shall repay to the Client any money paid by the Client for the Goods. MKE shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by MKE as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

20. Dispute Resolution

- 20.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
 - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

21. Privacy Act 1988

- 21.1 The Client agrees for MKE to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by MKE.
- 21.2 The Client agrees that MKE may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes: (a) to assess an application by the Client; and/or
- (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or (d) to assess the creditworthiness of the Client.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 21.3 The Client consents to MKE being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 21.4 The Client agrees that personal credit information provided may be used and retained by MKE for the following purposes (and for other purposes as shall be agreed between the Client and MKE or required by law from time to time):
- (a) the provision of Goods; and/or
 - (b) the marketing of Goods by MKE, its agents or distributors; and/or

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- (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 21.5 MKE may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 21.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
 - (c) advice that MKE is a current credit provider to the Client;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of MKE, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
 - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Client by MKE has been paid or otherwise discharged.

22. Building and Construction Industry Security of Payments Act 1999

- 22.1 At MKE'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 Payments Act 1999 may apply.
- 22.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

23.

24. General

- 24.1 The failure by MKE to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect MKE's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state of New South Wales in which MKE has its principal place of business, and are subject to the jurisdiction of the Sydney Courts.
- 24.3 Subject to clause. MKE shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by MKE of these terms and conditions (alternatively MKE's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 24.4 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 MKE nor to withhold payment of any invoice because part of that invoice is in dispute.

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- 24.5 MKE may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 24.6 The Client agrees that MKE may amend these terms and conditions at any time. If MKE makes a change to these terms and conditions, then that change will take effect from the date on which MKE notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for MKE to provide Goods to the Client.
- 24.7 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.
- 24.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

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DATE: _____

Signature: _____