

TEW STANDARD PURCHASE TERMS

1. Application of Standard Terms

- 1.1 These Terms apply to all Goods and Services purchased by TEW.
- 1.2 These Terms apply instead of:
 - (a) all terms set out on or referred to in any invoice, delivery docket, or other document delivered by the Supplier in connection with the supply of the Goods or Services; and
 - (b) all terms set out or referred to in any contract, credit application or other document already signed by TEW in connection with the supply of goods or services by the Supplier.
- 1.3 For the purposes of clause 1.2(a), signature by TEW of any such invoice, delivery docket or other document is not acceptance of any terms contained or referred to in it. Where applicable, signature only acknowledges delivery.
- 1.4 For the purposes of clause 1.2(b), acceptance of a Purchase Order by the Supplier operates as a replacement of those terms with these Terms.
- 1.5 If any Special Terms are inconsistent with these Terms, the Special Terms prevail to the extent of any inconsistency.

2. Ordering and Acceptance

- 2.1 TEW may offer to purchase Goods or Services by delivering a Purchase Order to the Supplier.
- 2.2 The Supplier accepts the offer when it communicates acceptance to TEW.

3. Price

- 3.1 The price payable for the Goods or Services is the price shown on the Purchase Order.
- 3.2 The Purchase Order may, instead of specifying a price, specify a mechanism for calculating the price. The price payable for the Goods or Services will be the price calculated in accordance with that mechanism.
- 3.3 Amounts shown on the Purchase Order are exclusive of GST, unless otherwise specified.
- 3.4 The Supplier must not add any other amount to the price, unless specified on the Purchase Order or approved by TEW. For example:
 - (a) the Supplier cannot add taxes, tolls, freight charges, insurance costs, travel costs, fuel costs, packaging costs, the cost of special tools or hire charges to the price;
 - (b) with respect to a Purchase Order for maintenance or repair, the cost of parts must first be approved by TEW.
- 3.5 If no price is shown on the Purchase Order the price is:
 - (a) the price shown on any quotation previously provided to TEW by the Supplier; or

- (b) where no quotation has been provided to TEW, a reasonable price having regard to the price of the same or similar goods or services in the market-place.

4. Invoice and Payment

- 4.1 Each invoice must specify the Purchase Order number, contain a brief description of the Goods or Services provided, specify the Supplier's name and ABN, specify the GST exclusive price, the GST and the total price including GST, and comply with the requirements for a tax invoice.
- 4.2 The Supplier must not render an invoice until the Goods are delivered or the Services are performed. For the purpose of this clause, Services will not be treated as performed until practical completion, namely when the quoted Services are complete, fully functional and required documentation submitted to TEW.
- 4.3 Progress Payment Claims must be agreed in writing prior to acceptance of an order.
- 4.4 TEW is not required to pay an invoice until 30 days after the end of the month in which the relevant invoice is received by TEW.
- 4.5 TEW may deduct from any payment:
 - (a) any amount owing by the Supplier to TEW;
 - (b) any expenses incurred by TEW as a result of a breach by the Supplier of the Contract; and
 - (c) the amount of any compensation or damages TEW is entitled to claim from the Supplier as a result of a breach by the Supplier of the Contract.
- 4.6 Payment of an invoice is without prejudice to any rights TEW may have against the Supplier in respect of a breach of the Contract.

5. Performance of Services

- 5.1 The Supplier must:
 - (a) perform the Services in a proper and workmanlike manner to the standards of skill and care normally exercised by qualified and experienced persons in the performance of similar services;
 - (b) perform the Services at the time and place specified in the Purchase Order, or as subsequently notified by TEW;
 - (c) complete the Services, or each designated stage of the Services, by the date/s specified in the Purchase Order, or as subsequently notified by TEW;
 - (d) perform the Services with reasonable expedition;
 - (e) comply with all industry standards which are relevant to performance of the Services, or which TEW directs the Supplier it must comply with; and
 - (f) where the Services are performed on a Project Site, comply with:
 - (i) all of the Project Site's conditions and policies; and
 - (ii) all safety directions given by Project Site's owner or principal contractor.

6. Defective Services

- 6.1 If the Services are not performed in accordance the Contract, the Supplier must, at TEW's request, rectify the defect and perform the Services in accordance with the Contract, at no additional cost to TEW. This is without prejudice to any other rights TEW may have against the Supplier for breach of the Contract.
- 6.2 The Supplier acknowledges its liability in relation to Services performed is not limited to:
- (a) supplying the Services again; or
 - (b) payment of the cost of having the Services supplied again.

7. Supply of Goods

- 7.1 The Supplier warrants that:
- (a) it has the right to sell the Goods;
 - (b) the Goods are free of encumbrance;
 - (c) if the Goods are sold by description, they will correspond with the description;
 - (d) if the Goods are sold by sample, they will correspond with the sample;
 - (e) the Goods are fit for all the purposes for which goods of that kind are commonly supplied, of merchantable quality and free of defects;
 - (f) the Goods comply with all applicable Laws; and
 - (g) the Goods are of the quality required by relevant industry standards.
- 7.2 The Supplier must:
- (a) comply with TEW's delivery instructions, including instructions as to:
 - (i) the date, time and place for delivery; and
 - (ii) the authorised recipient for the goods;
 - (b) when delivering the goods, obtain acknowledgement of delivery from TEW on a delivery docket which describes the Goods and specifies the Purchase Order number; and
 - (c) provide TEW with a copy of the delivery docket when delivering the Goods.
- 7.3 The Supplier must not:
- (a) deliver the Goods by instalments, unless approved by TEW; or
 - (b) leave the Goods unattended at the Project Site.
- 7.4 Title in the Goods passes to TEW:
- (a) when the Goods are delivered to TEW; or
 - (b) when TEW pays for the Goods,
- whichever is earlier.
- 7.5 Risk in the Goods passes to TEW:
- (a) when TEW signs a document acknowledging delivery of the Goods; or
 - (b) when TEW pays for the Goods,
- whichever is later.

- 7.6 However, if the Goods are to be installed by the Supplier at a Project Site, then title and risk passes when they are installed.
- 7.7 Receipt of the Goods by TEW does not by itself constitute acceptance of them. Any rights that TEW may have in connection with a breach of any warranty contained in clause 7.1, or any other breach of the Contract continue even if:
- (a) TEW has taken delivery of the Goods;
 - (b) TEW has signed a delivery docket in respect of the Goods; or
 - (c) title and risk in the goods have passed to TEW.
- 7.8 TEW may inspect and test the Goods:
- (a) during manufacture, if the Supplier or a contractor of the Supplier is manufacturing them; and
 - (b) prior to delivery, at the Supplier's premises.

8. Defective Goods

- 8.1 If any Goods supplied to TEW:
- (a) are not in accordance with the warranties contained in clause 7.1; or
 - (b) have not been supplied in the quantity requested in the Purchase Order, then:
 - (i) TEW may, at its election, reject all or some of the Goods;
 - (ii) the Supplier must, if requested by TEW, remove the rejected Goods from the Project Site at no cost to TEW; and
 - (iii) the Supplier must, if requested by TEW, repair or replace the rejected Goods at no additional cost to TEW.

This is without prejudice to any other rights TEW may have against the Supplier for breach of the Contract.

- 8.2 The Supplier acknowledges that its liability in respect of Goods supplied is not limited to:
- (a) replacement of the Goods or supply of equivalent goods;
 - (b) repair of the Goods;
 - (c) payment of the cost of replacing the Goods or acquiring equivalent goods; or
 - (d) payment of the cost of having the Goods repaired.
- 8.3 If TEW rejects Goods under this clause TEW is not obliged to pay for them, and title and risk passes back to the Supplier (if title and risk had already passed to TEW).

9. Supplier's Obligations under Subcontract Arrangements

- 9.1 Without limiting any other Terms, this clause 9 applies where the Supplier is providing the Goods or Services to TEW under an arrangement where TEW is on-providing the Goods or Services to a customer of TEW ("Head Contractor") as part of other goods or services that TEW is providing to that customer ("Head Contract").
- 9.2 The Supplier:

- (a) acknowledges and agrees that the obligations of TEW under the Head Contract will apply to the Supplier under the Contract, to the extent that they are able to, as if references to "TEW" were to the "Supplier" and references to the "Head Contractor" were to "TEW";
- (b) indemnifies TEW for all Claims TEW incurs under the Head Contract arising from or as a consequence of:
 - (i) any delay by the Supplier in providing the Goods or Services, including without limitation, Claims for liquidated damages for delay under the Head Contract to the extent that the delay is caused or contributed to by the Supplier;
 - (ii) any defective or non-compliant Goods or Services, including without limitation, all Claims relating to defects in the Goods or Services during the defects liability period under the Head Contract;
 - (iii) the Supplier's negligence;
 - (iv) any loss or damage to the Head Contractor's property or the Project Site or injury or death to person caused or contributed to by the Supplier; or
 - (v) termination of the Head Contract as a result of the Supplier's acts or omissions,

except to the extent caused by TEW's negligence. For the purposes of sub-clause (b)(ii) to (b)(v), Supplier includes the Supplier's officers, employees, agents and contractors.

9.3 Without prejudice to any other rights TEW may have against the Supplier, TEW may seek reimbursement from the Supplier for any Claim made by the Head Contractor against TEW arising from or as a consequence of any of the matters referred to in clause 9.2(b). TEW may withhold the amount claimed from any payment due or owing to the Supplier.

9.4 Without prejudice to any other termination rights of TEW, if the Head Contract ceases to exist or is terminated for any reason or due to unforeseen circumstances TEW is unable to continue to supply the Head Contractor for any reason, TEW may terminate the Contract, without penalty, with such termination effective on the date the termination of the Head Contract is effective. TEW will use reasonable endeavours to notify the Supplier as soon as possible after it receives notice of termination of the Head Contract.

10. Supplier's Warranties

10.1 The Supplier warrants that:

- (a) all information contained in its catalogues, price lists, brochures and advertising material is accurate and correct;
- (b) it and its employees, agents and contractors have the necessary expertise and qualifications to perform the Services;
- (c) any equipment it uses to perform the Services:
 - (i) is in good working order and repair; and
 - (ii) has passed all inspections, and is certified and registered as required by any Authority or under any Law;

- (d) it and its employees, agents and contractors hold all necessary permits, licences, certificates and registrations necessary to perform the Services;
- (e) the Goods are manufactured in a workplace using best workplace health and safety standards; and
- (f) it has examined and understands all documentation provided to it by TEW in connection with performance of the Services, including where applicable TEW's policies and manuals, plans and specifications of works.

11. Compliance with Statutory Requirements

11.1 The Supplier must comply with all Laws which are applicable to:

- (a) the performance of the Services;
- (b) the manufacture, sale, delivery, labelling and quality of the Goods;
- (c) the operation of any equipment used in performing the Services; and
- (d) the conduct of the Supplier's business.

12. Indemnities and Releases

12.1 The Supplier indemnifies TEW against all Claims TEW incurs as a result of:

- (a) the Supplier's negligence;
- (b) the Supplier's breach of the Contract;
- (c) the Supplier's breach of any warranty contained in these Terms; and
- (d) the Supplier's breach of any Laws.

For the purposes of sub-clauses (a) and (d), "Supplier" includes the Supplier's officers, employees, agents and contractors.

12.2 The Supplier releases TEW from all Claims for injury, death and damage to or destruction of property which occur:

- (a) on the Project Site;
- (b) in connection with performance by the Supplier of the Services; or
- (c) in connection with supply by the Supplier of the Goods,

unless caused by TEW's negligence.

12.3 The Supplier acknowledges and accepts all risks associated with performing the Services and delivering the Goods.

13. Damage to TEW's Property

If the Supplier causes damage to TEW's property in performing the Services or delivering the Goods it must at TEW's request rectify the damage or compensate TEW for the damage.

14. Assignment and Subcontracting

14.1 The Supplier must not assign the Contract or subcontract supply of the Goods or Services, without TEW's consent.

14.2 TEW may withhold its consent in its absolute discretion, or grant consent subject to conditions. For example, TEW may require that the assignee or subcontractor sign an agreement agreeing to be bound by these Terms.

15. Insurance

- 15.1 The Supplier must maintain public liability insurance for at least \$20million, professional indemnity insurance for at least \$3million, worker's compensation insurance if required by Law, product liability insurance, defective workmanship insurance and such other insurances as may be reasonably required by TEW.
- 15.2 The Supplier must provide TEW, at TEW's request, a copy of the certificate of currency for any insurance policy required to be taken out under this clause and the Supplier's worker's compensation number.

16. Confidentiality

All Information provided to the Supplier in connection with the Contract remains the property of TEW and must be kept confidential and not disclosed to any other person unless necessary for performing the Services or supplying the Goods.

17. Advertising

The Supplier must not, without TEW's consent, publish or advertise that TEW is a customer of the Supplier. TEW may withhold its consent in its absolute discretion.

18. Intellectual Property

- 18.1 All Intellectual Property created by the Supplier in performing the Services is the property of TEW.
- 18.2 The Supplier must do all things necessary to ensure that ownership in the Intellectual Property passes to TEW.
- 18.3 The Supplier warrants that performance of the Services and supply of the Goods, will not infringe the Intellectual Property rights of any other person.

19. Default and Termination

- 19.1 TEW may terminate the Contract by notice to the Supplier if:
- (a) the Supplier breaches the Contract and does not remedy the breach within 7 days after receiving notice from TEW requiring it to do so;
 - (b) the Supplier becomes an Externally-Administered Body Corporate; or
 - (c) the Supplier commits an act of bankruptcy or becomes bankrupt.
- 19.2 If TEW terminates the Contract under clause 19 and engages another supplier to fulfill the Purchase Order, the Supplier must reimburse TEW to the extent that the costs of the alternative arrangements exceed the price that was payable to the Supplier under the Contract. This does not limit any other rights TEW may have against the Supplier for a breach of the Contract.
- 19.3 Where the Purchase Order is for Services which are to be provided on a periodic or progressive basis, TEW may terminate the Contract at any time by giving 7 days notice to the Supplier. This is without prejudice to any rights which accrued to either party under the Contract prior to termination.

20. Goods and Services Tax

If the price shown on the Purchase Order is exclusive of GST, and the supply of the Goods or Services under the Contract is a taxable supply, TEW must also pay GST on the price.

21. Waiver

The failure of either party to exercise any right arising as a result of a breach by the other will not waive that right, nor will any practice developed between the parties waive or lessen their rights under the Contract.

22. Relationship

The Contract does not create or constitute a relationship of employment, agency, partnership or joint venture.

23. Governing Law

The Contract will be construed in accordance with the law of Queensland and the parties submit to the exclusive jurisdiction of the Queensland Courts in Brisbane City notwithstanding the domicile or residence of any party or the occurrence of any act, matter or thing outside of Queensland or the jurisdiction of those Courts.

24. Arbitration

If a dispute arises in relation to Goods or Services supplied by the Supplier to TEW then TEW may at any time prior to determination by a Court require that such dispute or part thereof be determined by arbitration according to the *Commercial Arbitration Act 2013 (Qld)*. There will be a single arbitrator appointed by agreement between the parties, or failing agreement as nominated at the request of either party by the President of the Queensland Law Society. The arbitrator's decision is final and binding subject to any right of appeal under the *Commercial Arbitration Act 2013 (Qld)*.

25. Severance

If any provision of the Contract is, for any reason, considered or found by a Court of competent jurisdiction or any competent Authority to be invalid, illegal or unenforceable, that provision is to be severed from the remainder of the provisions of the Contract and will be deemed never to have been part of the Contract. The remainder of the provisions of the Contract will remain in full force and effect unless the basic purposes of the Contract are defeated.

26. Interpretation

In the interpretation of these Terms unless the context otherwise requires:

- (a) Words denoting any gender include all other genders.
- (b) References to a person includes a corporation, association, trust, partnership, unincorporated body, government and local authority or agency or other entity.
- (c) References to any of the parties include in the case of a person, their personal representatives and permitted assigns, and in other cases their successors and permitted assigns and, in the case of a trustee, includes any substituted or additional trustee.
- (d) Any obligation on the part of two or more persons is deemed to bind or benefit, as the case may be, any two or more of them jointly and each of them severally.
- (e) Words expressing the singular include the plural and vice versa.
- (f) Headings are included for convenience only and do not affect the interpretation of the Contract.

- (g) References to the Contract are to the Contract as amended, supplemented or varied from time to time.
- (h) References to any document or agreement includes all references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time.
- (i) References to "\$" and "dollars" is to Australian currency.
- (j) References to writing include typing, telex, facsimile and all other means of reproducing words in a permanent and visible form.
- (k) References to any legislation includes any legislative provision which amends, extends, consolidates or replaces it and any orders, regulations, instruments, proclamations or other subordinate legislation made under it.
- (l) References to institutes, associations, bodies and authorities whether statutory or otherwise will, if it ceases to exist or is reconstituted, renamed or replaced or its powers or functions are transferred, refer to the institute, association, body or authority established or constituted in its place or which substantially succeeds to its powers or functions.
- (m) The meaning of any general words is not restricted by any accompanying example, and the words "includes", "including", "such as" or "for example" (or similar phrases) do not limit what else might be included.
- (n) No rule of construction will apply to the disadvantage of a party because that party was responsible for the drafting of the Contract or any part of it.

27. Definitions

27.1 In these Terms the following terms have the following meanings:

"Authority" means any Commonwealth, State and Local Government departments, bodies, municipalities, instrumentalities and public, statutory or other like authorities.

"Claims" means:

- (a) any claim, legal action or liability for damages or compensation;
- (b) liability to pay any fine or penalty;
- (c) expenses, including legal costs; and
- (d) consequential losses.

"Contract" means the contract constituted by these Terms and the Purchase Order.

"Externally-Administered Body Corporate" has the meaning defined in the Corporations Act 2001 (Cth).

"Goods" means the goods specified in the Purchase Order.

"GST" means the GST referred to in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

"Information" means all plans, specifications, data, policies, permits, financial information, marketing strategies, details of systems and modes of operation, and other documents or information about TEW or the Goods or Services.

"Intellectual Property" includes patents, designs, copyright and trademarks (whether registered or not).

“Laws” means all Federal, State and Local laws, including any regulations or orders made pursuant to them, and any standards or codes of practice referred to in them.

“Project Site” means TEW’s premises or such other premises where the Goods are required to be delivered or the Services are required to be performed.

“Purchase Order” means the document used by TEW to place an order with the Supplier. The document may be in electronic form.

“Services” means the services specified in the Purchase Order, and includes delivery and installation of any Goods.

“Special Terms” means any terms specified in or attached to the Purchaser Order by TEW.

“Supplier” means any person who supplies or agrees to supply Goods or Services to TEW.

“Terms” means these TEW Standard Purchase Terms.

“TEW” means Electrical Workshop Australian Pty Ltd ABN 85 118 791 950, trading as “TEW”.