

By instructing Us to supply the Goods and/or Services, the Client acknowledges that it has read and agrees to be bound by the terms of this agreement.

## 1. Definitions

**the Client** means the client and/or customer or their authorised representative.

**Force Majeure** means as defined in clause 11.

**Goods** means goods supplied by Us to the Client under this agreement.

**Order** means an order placed by the Client with Us for the supply of Goods and/or Services whether or not We have issued a quotation for the supply of the Goods and/or Services.

**PPSA** means the *Personal Properties Securities Act 2009* (Cth).

**PPSA Personal Property** means:

- (a) all of the Client's present and after-acquired property in which the Client can be a grantor of a PPSA Security Interest including property in which the Client has, or may in the future have, rights or the power to transfer rights;
- (b) proceeds; and
- (c) PPSA retention of title property (as that term is defined in the *Corporations Act 2001* (Cth)).

**Price** means the price of Goods and Services set out in the tax invoice We issue (and **Varied Price**, defined pursuant to clause 2 shall, with necessary modification, have a corresponding meaning).

**Services** means services supplied by Us to the Client under this agreement.

**Site Issues** means as described in clause 9.

**Us or We** means Final Electric Pty Ltd ACN 660 983 148 and its successors and **assignees**.

## 2. Quotation and Orders

2.1. Unless previously withdrawn a quotation issued by Us is open for acceptance by the Client for up to 30 days from the date of issue (unless We agree to a later date).

2.2. Unless otherwise provided in writing by Us, any quotation is arrived at, and any Order (whether or not including Additional Work) is accepted, relying upon, and conditional upon the following:

- (a) the accessibility, serviceability and location of the existing site and its infrastructure (for example, electrical cables, roofing) is as revealed by external visual inspection by Us or information provided by the Client;
- (b) the Client being responsible for (at its cost):
  - i. clearing the site and the areas surrounding the site;
  - ii. restoration of areas surrounding the site upon which the services are to be provided;
  - iii. the relocation or removal of underground rock which is necessary or expedient to enable Us to supply the Goods or Services as required;
- (c) Us not being responsible for relocation or removal of any other obstructions which is necessary or

expedient to enable Us to supply the Goods or Services as required;

- (d) a brief visual inspection of the Client's premises by Us revealing all reasonably necessary material and information required for Us to prepare the Quotation;
- (e) without limiting the foregoing, no reasonably unforeseen circumstances (including Force Majeure) arising  
**(ex-Quotation Issues)**.

2.3. Acceptance of a quotation by the Client and these terms (including, if the Client is a Company, the guarantee by the directors of the Company) is accepted, relying upon, and conditional upon the following:

- (a) signed express consent of the Client; or
- (b) clicking "Agree" or adjacent acceptance checkbox button upon any website upon which these terms are placed (currently [www.finalelectric.com.au](http://www.finalelectric.com.au)).

2.4. A contract shall arise between Us and the Client by acceptance of an Order by Us, which may be express (in writing, by email or verbally) or implied by commencement of Services, supply of Goods, or purchase of Goods by Us from a third party.

2.5. If any change and/or variation in the Goods or Services is required due to (without limitation):

- (a) a request by the Client accepted by Us;
- (b) work outside the scope of the Quotation required or requested by the Client or deemed reasonably necessary or expedient by Us, occurring as a result of ex-Quotation Issues and/or Site Issues;
- (c) works that exceed those reasonably required to be performed to comply with the warranty provided by Us and statutory obligations (**Additional Work**);

then We may:

- (d) notify the Client of the Additional Work and the estimated new Price;
- (e) vary the quotation to include the Additional Work (in default, to be performed at the standard rate from time to time); and
- (f) upon the agreement by the Client for Us to perform the Additional Work increase the Price (**Varied Price**) accordingly.

2.6. If the Client does not engage Us to perform the Additional Work, We shall not be liable (without limiting anything else in these terms) for any loss or damage howsoever arising as a result of the Additional Work not being performed.

2.7. If the price of materials purchased by Us (where the price of those materials were included in the quotation) for the provision of the Services increases between the quotation date and the date of performance by Us (**Cost of Materials Increase**), the Price shall be increased to include the Cost of Materials Increase..

2.8. This clause 2 shall not have the effect of contracting out of any mandatory provisions of the *Competition and Consumer Act 2010* ("CCA").

2.9. Clauses 2.4(b)i and ii shall not apply to Additional Work that is of a nature that is of an urgent nature, which may be performed by Us without notice, in which case the

Quotation can be varied by Us and the Varied Price shall be payable.

### **3. Price and Payment**

- 3.1. The Price is payable in the manner and times specified by Us in the Quotation upon the provision by Us to the Client of a GST Tax Invoice.
- 3.2. If the Price increases to a Varied Price as a result of Additional Work, payment of the Price shall be on account of the Varied Price.
- 3.3. Time for payment of the Price is of the essence.
- 3.4. The Client may be charged interest on any overdue amounts at the rate of 3% per annum above the then current cash rate target of the Reserve Bank of Australia, calculated daily from the day the payment became due until the day of full and final payment.
- 3.5. The Client agrees to pay and indemnify Us against any loss or damage incurred by Us as a result of a breach by the Client of this Agreement, including but not limited to the legal expenses on an indemnity basis incurred by Us in collecting any outstanding debts due by Client to Us.

### **4. Supply of Goods and Services**

- 4.1. Goods and Services will be supplied to the Client's address on the quotation unless otherwise notified to Us by the Client.
- 4.2. The Client must ensure that there is clear and adequate access to the area where the Goods are to be delivered and the Services supplied.
- 4.3. We may subcontract to any other person the performance of the Goods and Services without notice.

### **5. Title and risk**

- 5.1. The risk of loss or damage to the Goods passes to the Client when the Goods are delivered to the Client's address on the quotation or any other address notified to Us by the Client.
- 5.2. Notwithstanding delivery of the Goods to the Client, title in the Goods will not pass to the Client until the Price has been paid.
- 5.3. This clause 5 creates a purchase money security interest for the purposes of the PPSA. To the extent permitted under the PPSA, the Client agrees to contract out of the provisions listed in section 115 of the PPSA which impose a burden on Us. the Client waives its right to be provided with verification statements under section 157 of the PPSA. We and the Client agree that neither will disclose to any third person information referred to in section 275(1) of the PPSA and that this is a

confidentiality agreement for the purposes of section 275(6) of the PPSA.

- 5.4. If the Client is a consumer, as such term is defined in the PPSA, nothing in these terms shall affect the Client's statutory rights.

### **6. Damaged or defective Goods**

- 6.1. We are not liable for any damage to Goods after delivery to the Client, arising out of the Client's handling, storing or other negligent act in relation to the Goods.

### **7. Guarantee**

- 7.1. If the Client is a Company, the director(s) of the Client hereby jointly and severally guarantee to Us the due and punctual payment and the performance by the Client of:
  - (a) the Price;
  - (b) all other moneys payable by the Client to Us howsoever arising (including legal costs of enforcement); and
  - (c) the terms and conditions contained in this Agreement, on the part of the Client to be paid, observed or performed.

### **8. Limitation of Liability**

- 8.1. To the extent permitted by law, all terms, guarantees, warranties, representations or conditions which are not expressly stated in this agreement are excluded. If We are liable for a breach of an imposed term, guarantee, warranty, representation or condition or warranty, the liability held by Us is, at the option of Us, limited to:
  - (a) the replacement of the Goods or the supply of equivalent goods or the supply of the Services again;
  - (b) the repair of the Goods;
  - (c) the payment of the cost of replacing the Goods or acquiring equivalent goods; or
  - (d) the payment of the cost of having the Goods repaired or having the Services supplied again.
- 8.2. To the extent permitted by law We will not be liable for any special, indirect or consequential loss or damage, loss of profit or opportunity and loss of data arising out of or in connection with the Goods or Services, including as a result of the late or non-supply of Goods, whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.
- 8.3. To the extent permitted by law We will not be liable for any technological programming malfunction or failure of operation of internet-related functions of any equipment or Goods.
- 8.4. Nothing in this agreement is intended to have the effect of contracting out of any mandatory provisions of the *Competition and Consumer Act 2010* ("CCA"). The extent of the liability held by Us for breach of any warranty implied into these terms by the CCA shall be limited to the cost of rectifying, resupplying, or paying the cost of resupplying the services comprising the Products

and/or Services and/or repairing or replacing products comprising the Products and/or Services.

**9. Site Issues**

9.1. This clause contains some matters that are Ex-Quotation issues (see clause 2.3). If applicable, they may affect the Price. These matters include:

- (a) cutting tiles or stone;
- (b) trenching when isn't specified;
- (c) cutting or working in any way on asbestos;
- (d) replacement of fixtures which may break when removed due to age or brittleness or rust or such degradation;
- (e) excessive heights or access permits which require plant hire that is not anticipated nor requested.

**10. Termination**

10.1. Either party may terminate this agreement immediately by notice to the other party:

- (a) if the other party breaches a material term of this agreement capable of being remedied and fails to remedy the breach within 10 business days after being given notice of breach;
- (b) if the other party breaches a material term of this agreement which is not capable of remedy; or
- (c) if the other party is unable to pay its debts as they fall due; makes or commences negotiations with a view to making a general rescheduling of its indebtedness, scheme of arrangement or composition with its creditors; or takes any corporate steps for its winding up or the appointment of a receiver, administrator or official manager over any of its revenue and assets.

10.2. If this agreement is terminated for any reason the Client:

- (a) must immediately pay Us for all Goods or Services already ordered from or supplied by Us;
- (b) hereby grants Us a licence to attend at the Client's premises for the purpose of collecting its equipment, without prejudice to any other legal rights.

**11. General provisions**

11.1. If the performance of this agreement or any obligation under it is prevented, restricted or interfered with by reason of an act of God, fire, lightning, flood or other natural disaster, subsidence, power or gas shortage, inability or delay in obtaining any local government approvals, consents or permits or because of any industrial dispute of any kind or any other cause, whether similar or not to the foregoing, outside of the affected party's control, the affected party, upon giving prompt notice to the other party, is excused from such performance to the extent of such prevention, restriction or interference (**Force Majeure**).

11.2. This agreement is governed by the laws of Victoria and the parties submit to the non-exclusive jurisdiction of the Courts of Victoria.

11.3. If any clause or part of the clause is illegal, unenforceable or in valid, that clause or part is to be

treated as removed from this agreement, but the rest of the agreement is not affected.

**12. Charge**

12.1. the Client grants to Us:

- (a) a PPSA Security Interest over all PPSA Personal Property; and
- (b) a fixed charge over all Other Property, to secure the Payment of all monies owing to Us on any account at the date hereof or from time to time in the future and the punctual performance of all of the Client's other obligations to Us at any time.

12.2. Administration / Authority to act:

- (a) the Client appoints any director, manager or proprietor for the time being of Us as Attorney to do all things necessary to effect stamping and registration of this security and to do all other things reasonably necessary to give effect to and enforce this charge including the lodging of a caveat on any title to real property of the Client and/or registering the PPSA Security Interest upon the Personal Property Security Register.

I/WE,

hereby ACKNOWLEDGE that I/we have read, understood and approved these terms and conditions

Signed.....

Dated: .....

Signed.....

(Guarantor – If applicable)

Witness: .....

(Guarantor Witness)