

## TERMS AND CONDITIONS OF TRADE

### 1. Interpretation

In these Terms:

**"Company"** means Castlereagh Lodge Pty Limited t/as Castlereagh Electrical ABN 30 095 653 259.

**"Customer"** means the purchaser of Goods from the Company.

**"Goods"** means all goods sold and/or delivered by the Company to the Customer.

**"Services"** means all 'services provided by the Company to the Customer.

**"Terms"** means these terms and conditions of trade.

### 2. Application

2.1 These Terms apply to all contracts for the sale of Goods by the Company and any contracts for the provision of services by the Company.

2.2 No amendment, alteration, waiver or cancellation of any of these Terms is binding on the Company unless confirmed by the Company in writing.

2.3 The Customer acknowledges that no employee or agent of the Company has any right to make any representation, warranty or promise in relation to the Goods or the sale of the Goods other than as contained in these Terms.

### 3. Prices

Prices are determined at the time of order, however, the description of goods, services and prices may be subject to change or correction at any time without notice. Although the Company seeks to ensure prices and descriptions are correct, it makes no representation or warranty as to that information being accurate or complete. If the Company has made an error, it will try to notify the Customer as soon as possible and, if it is able, allow the order to be cancelled.

### 4. Payment

4.1 Payments are to be made to the Company without any deduction or discount other than as stated in these Terms or in the relevant invoice or statement.

4.2 The Company may require a deposit when placing an order.

4.3 The balance of the invoice price must be paid in full before delivery of Goods.

4.4 Interest is payable on all overdue accounts calculated on a daily basis at the rate of 5% per month as from the date due for payment until payment is received by the Company.

### 5. Delivery of Goods

5.1 The Customer must, within 14 days of being notified of their availability, collect or accept delivery of any Goods.

5.2 If the Customer fails to collect the Goods or accept delivery within 28 days of being notified of their availability, the Company may terminate this contract, keep the deposit and resell the Goods.

5.3 In addition to clause 4.4, the Company reserves the right to charge the Customer storage on goods not collected or delivered within 14 days of notification of their availability at the rate of \$35.00 per week or part thereof.

5.4 The Company reserves the right to deliver the Goods in whole or in instalments, as well as to deliver prior to the date for delivery and, in such event, the Customer must not refuse to take delivery of the Goods.

5.5 Any failure on the part of the Company to deliver instalments within any specified time does not entitle the Customer to repudiate the contract with regard to the balance remaining undelivered.

**6. Title**

- 6.1 All Goods sold remain the property of the Company, even if affixed to real property used or owned by the Customer, until the Customer has paid for them and has paid all other outstanding amounts due and payable to the Company.
- 6.2 Legal and beneficial ownership of the Goods will pass to the Customer after payment of cleared funds has been made in accordance with clause 6.1.

**7. Risk and Insurance**

- 7.1 The risk in Goods sold or supplied passes to the Customer on delivery to the Customer or its officers, servants or agents, even though title in the Goods has not passed to the Customer at that time.
- 7.2 Until title in the Goods passes, the Customer agrees to store the Goods in such a way that they can be easily identified and keep them fully insured against all usual risks of damage or loss at their own expense..

**8. Inspection**

Unless the Customer has inspected the Goods and given written notice to the Company within 2 days after collection or delivery that the Goods do not comply with the relevant specifications or descriptions, the Goods are deemed to have been accepted in good order and condition.

**10. Limited Liability**

- 10.1 These Terms do not affect the rights, entitlements and remedies conferred by the Australian Consumer Law.
- 10.2 The Company is not subject to, and the Customer releases the Company from, any liability (including but not limited to consequential loss or damage) because of any delay in delivery or fault or defect in the Goods. The Customer acknowledges that the Company is not:
- (a) responsible if the Goods do not comply with any applicable safety standard or similar regulation; and
  - (b) liable for any claim, damage or demand resulting from such non-compliance.
- 10.3 If any statutory provisions under the Australian Consumer Law or any other statute apply to the contract between the Company and the Customer (Contract) then, to the extent to which the Company is entitled to do so, the Company's liability under the statutory provisions is limited, at the Company's option, to:
- (a) replacement or repair of the Goods or the supply of equivalent Goods; or
  - (b) payment of the cost of replacing or repairing the Goods or of acquiring equivalent goods;
- and in either case, the Company will not be liable for any consequential loss or damage or other direct or indirect loss or damage.

**11. Warranty**

- 11.1 All Goods supplied are covered by such warranties as are specified by the manufacturer and supplied subject to the product standards detailed by the manufacturer.
- 11.2 On discovery of any defect in the Goods, the Customer must immediately notify the Company in writing of such defect. The Customer must not carry out any remedial work to alleged defective Goods without first obtaining the written consent of the Company to do so.
- 11.3 The provisions of any act or law (including but not limited to the Australian Consumer Law) implying terms, conditions and warranties, or any other terms, conditions and warranties which might otherwise apply to or arise out of the Contract are hereby expressly negated and excluded to the full extent permitted by law.
- 11.4 The Customer expressly acknowledges and agrees that it has not relied upon, and the Company is not liable for any advice given by the Company, its employees, agents or representatives in relation to the suitability for any purpose of the Goods.

## **12. Personal Property Securities**

12.1 The Customer acknowledges and agrees that these terms:

- (a) Constitute a Security Agreement for the purposes of the Personal Property Securities Act 2009 (Cth) ("the Act"); and
- (b) Create a Security Interest, for the purposes of that Act, in:
  - (i) All Goods previously supplied to the Customer by the Company; and
  - (ii) All Goods that will be supplied in the future to the Customer by the Company.

12.2 The Customer undertakes to:

- (a) promptly sign any further documents and/or provide any further information that the Company may reasonably require to register or amend any document on the Personal Properties Security Register ("PPSR");
- (b) indemnify, and upon demand reimburse, the Company for all costs incurred in the process of registration and perfection of a Security Interest under the Act and/or losses suffered as a result of default, including but not limited to costs of; terminating delivery of Goods, repossessing Goods, registration on the PPSR, enforcement proceedings or releasing PPSR Registrations;
- (c) not grant, register, or permit to be registered, any interest in favour of a third party in respect of the Goods without the Company's prior written consent; and
- (d) whenever requested by the Company and at the Customer's cost, do anything that the Company requests to more satisfactorily assure or secure the supplied Goods, including all things necessary for the Company to perfect its Security Interest.

12.3 To the extent allowed by the Act, the Customer agrees that the following provisions of the Act do not apply:

- (a) to the extent that section 115(1) of the Act allows them to be excluded: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 138B(4), 142 and 143; and
- (b) to the extent that section 115(7) of the Act allows them to be excluded, sections 127, 129(2) and (3), 132, 133(1)(b), 134(2), 135, 136(3), 136(4), 136(5) and 137.

12.4 Further, to the extent allowed by the Act, the Customer waives any right to receive any notice under the Act in respect of any security interest, including any notice under sections 144 and 157.

## **13. Contract**

The terms of the Contract are wholly contained in these Terms and any other writing signed by both parties. The Contract is deemed to have been made at the Company's place of business and any cause of action is deemed to have arisen there.

## **14. Default**

In the event that the Customer fails to pay any outstanding amount owing to the Company whatsoever, the Company may, without notice or liability to the Customer and without prejudice to any other remedies that may be available:

- (a) terminate any further delivery of Goods to the Customer; and
- (b) repossess any Goods delivered to the Customer for which payment has not been received.

## **15. Right to Enter Premises**

15.1 In any of the circumstances referred to in clause 14, the Customer:

- (a) irrevocably authorises the Company by itself, its agents or representatives at all reasonable times, without notice, to enter onto (with force if reasonably necessary) and to remain in and on any premises where the Goods are located in order to collect the Goods, without being guilty of any manner of trespass;
- (b) assigns to the Company all the Customer's rights to enter onto and remain in and on such premises until all the Goods have been collected; and
- (c) The Customer acknowledges that the Company will not be liable for any loss, damage or injury caused to the Customer or its premises in repossessing the goods.

## **16. Force Majeure**

The Company will not be liable for any breach of contract due to any matter or thing beyond the Company's control (including but not limited to transport stoppages, transport breakdown, fire, flood, earthquake, acts of God, strikes, lock-outs, work stoppages, wars, riots or civil commotion, intervention or public authority, explosion or accident.

**17. Waiver of Breach**

No failure by the Company to insist on strict performance of any of these Terms is a waiver of any right or remedy which the Company may have, and is not a waiver of any subsequent breach or default by the Customer.

**18. No Assignment**

Neither the Contract, nor any rights under the Contract may be assigned by the Customer without the prior written consent of the Company, which is at the Company's absolute discretion.

**19. Severability**

If any provision contained in these Terms is held by a court to be unlawful, invalid or unenforceable, the validity and enforceability of the remaining provisions are not affected.

**20. Governing Law**

These Terms and the Contract shall be governed by the law of New South Wales and the parties submit to the courts of New South Wales in respect of any dispute arising.