

EDS - Terms & Conditions

1. Definitions

- 1.1. "Contractor" shall mean EDS- Electrical & Data Services and its successors and assigns.
- 1.2. "Customer" shall mean the Customer or any person acting on behalf of and with authority of the Customer.
- 1.3. "Goods" shall mean Goods supplied by the Contractor to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.4. "Services" shall mean all services supplied by the Contractor to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.5. "Price" shall mean the cost of the Goods as agreed between the Contractor and the Customer subject to Clause 4 of this contract.
- 1.6. "Quotation" means any written offer (regardless of form) provided by the Contractor to the Customer.
- 1.7. "Material Change" means any unforeseen or unexpected change in any of the Contractor's obligations of engagement, not limited to any third party, force major or uncontrollable events outside of the discretion of the Contractor.

2. Acceptance

- 2.1. Any instructions received by the Contractor from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Contractor shall constitute acceptance of the terms and conditions contained herein.
- 2.2. Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3. Upon acceptance of these Terms and Conditions by the Customer the Terms and Conditions are irrevocable and can only be rescinded in accordance with these Terms and Conditions.
- 2.4. None of the Contractor's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Contractor in writing nor is the Contractor bound by any such unauthorised statements.
- 2.5. The Customer undertakes to give the Contractor not less than fourteen (14) days prior to written notice of any proposed change in the Customer's name and/or any change in the Customer's details (including but not limited to, changes in the Customer's address, telephone number/s, or business practice).

3. Goods

The Goods are described on the invoice, Quotation, work authorised or any other work commencement forms as provided by the Contractor to the Customer.

4. Price and Payment

- 4.1. At the Contractor's sole discretion, the Price shall be either:
 - 4.1.1. As interacted on the Quotations or invoices provided by the Contractor to the Customer; or
 - 4.1.2. The Contractor's quoted price (subject to clause 4.2) which shall be binding upon the Contractor provided that the Customer has accepted the Quotation either in writing or by clause 2.1.
- 4.2. Any variation from the plan of scheduled works or specifications will be charged for on the basis of the Contractor's Quotation and will be shown as variations on the invoice, payment for all variations must be made in accordance with the original Quotation payment terms.
- 4.3. At the Contractor's sole discretion, a deposit may be required, the deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods and shall become immediately due and payable pursuant to the Quotation.
- 4.4. Time of payment for the Goods shall be of the essence and will be stated on the invoice, Quotation or any other order form; if no time is stated then payment shall be on delivery of the Goods.
- 4.5. At the Contractor's sole discretion, for certain approved Customers, payment will be due fourteen (14) days following the date of the invoice.

- 4.6. Payment will be made by the Customer on delivery of goods by cash, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Customer and the Contractor.
- 4.7. The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent given by the Contractor.
- 4.8. Any deposit paid by the customer upon acceptance of a Quotation by the Contractor is non-refundable in the event of the work being cancelled by the Customer.
- 4.9. The Contractor reserves the right to invoice for any additional costs incurred for planned works that are beyond the scope of the Quotation or if there is a Material Change in the Customers requested work.
- 4.10. At the Contractor's sole discretion, progress payments will be requested pursuant to the terms of the Quotation. No further work will be commenced by the Contractor until the progress payment that has been requested is received.

5. Delivery of Goods/Services

- 5.1. Delivery of Goods shall be made to the Customer's address; the Customer shall make all arrangements necessary to take delivery of the Goods wherever they are intended for delivery.
- 5.2. The failure of the Contractor to deliver shall not entitle either party to treat this contract as repudiated.
- 5.3. The Contractor shall not be liable for any loss or damage due to failure by the Contractor to deliver the Goods (or part thereof) due to a Material Change in circumstances.
- 5.4. The Contractor shall not be liable for any loss or damage due to failure by the Customer to secure the Goods (or part thereof) delivered to the customer.

6. Customer Risk

The Contractor provides no warranty on any Goods that are supplied by the Customer. The Contractor also reserves the right to use any Goods which are supplied by the Customer. In the event the Contractor elects to use Goods supplied by the Customer the Contractor provides no guarantee the Goods will be fit for purpose.

7. Dimensions, Design, Plans and Specifications

- 7.1. The Contractor shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer.
- 7.2. If the giving of a quotation for the supply of any Service involves the Contractor estimating measurements and quantities, it shall be the responsibility of the Contractor to verify the accuracy of the Contractor's estimated measurements and quantities in the preparation of quotes and sales proposals.

8. Defects/ Returns

- 8.1. The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Contractor of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote; the Customer shall afford the Contractor an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way; if the Customer fails to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the Terms and Conditions and free from any defect or damage.
- 8.2. For the avoidance of doubt, any Goods which the Customer has altered, removed or adversely effected then the Contractor will not be liable for any return or replacement of the Goods.
- 8.3. The Contractor may (in their discretion) accept the Goods for credit but this may incur a reasonable handling fee including any restocking fee or related fee in returning the Goods.

9. Warranty

For Goods not manufactured by the Contractor, the warranty shall be the current warranty provided by the manufacturer of the Goods; the Contractor shall be under no liability whatsoever, except for the express conditions as detailed and stipulated in the manufacturer's warranty.

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

- 10.1. The Customer must inspect the Service on completion and must within seven (7) days of completion notify the Contractor, in writing, of any evident defect/damage, shortage in quantity or failure to comply with the description or quote. Upon such notification the Customer must allow the Contractor to inspect the relevant Goods or Services.
- 10.2. 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").
- 10.3. The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 10.4. Notwithstanding the CCA, the Contractor shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- 10.4.1. the Customer failing to properly maintain the Serviced area;
 - 10.4.2. the Customer using the Serviced area for any purpose other than that for which they were designed;
 - 10.4.3. the Customer continuing use or attempting to repair after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - 10.4.4. the Customer failing to follow any instructions or guidelines provided by the Contractor; and
 - 10.4.5. fair wear and tear, any accident, or act of God.

11. Building Construction Industry Security of Payments Act

- 11.1. At the Contractor'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 Payment Act may apply.
- 11.2. 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 of the States and Territories of Australia, except to the extent permitted by the Act where applicable.

12. Default and Consequences of Default

- 12.1. Where an invoice has remained unpaid for 14 business days, a reminder may be sent to the Customer, in writing.
- 12.2. If the invoice remains unpaid after the reminder has been provided, solicitors or collection agents will be engaged and the Customer indemnifies the Contractor for any legal and/or collection costs.
- 12.3. Interest on overdue invoices shall accrue daily from the date that payment was due, until the date of payment, at a rate of ten percent (10%) accruing monthly.
- 12.4. Without prejudice to any other remedies the Contractor may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Goods/Service to the Customer. The Contractor will not be liable to the Customer for any loss or damage the Customer suffers because the Contractor has exercised its rights under this clause.

13. Title

- 13.1. The Contractor and the Customer agree that ownership of the Goods shall not pass until:
- 13.1.1. the Customer has paid The Contractor all amounts owing to the Contractor; and
 - 13.1.2. the Customer has met all of its other obligations to the Contractor.
- 13.2. It is further agreed that until ownership of the Goods passes to the Customer:
- 13.2.1. the Customer is only a bailee of the Goods and unless the Goods have become fixtures must, return the Goods to the Contractor on request.
 - 13.2.2. the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.

14. Cancellation

- 14.1. The Contractor may cancel any contract to which these terms and conditions apply. On giving such notice the Contractor shall invoice the Customer for any work completed up to that point

and any materials purchased. The Customer will have the option to purchase those materials from the Contractor at cost value plus any fees charged by the Contractor for delivery of those materials to an address nominated by the Customer. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.

- 14.2. The Customer may cancel any contract to which these terms and conditions apply. For Services in excess of \$3,000, the following cancellation fees apply:

- 14.2.1. Within 7 days – 10% of the total cost of the Service;
- 14.2.2. Within 48 hours – 20% of the total cost of the Service;
- 14.2.3. Within 24 Hours – 30% of the total cost of the Service;
- 14.2.4. On the day – Full cost of the service, and any additional, reasonable fees for time and travel incurred by the Contractor. The above percentages include an administration fee for cancellation.

- 14.3. For Services less than \$3,000, the Customer may cancel any contract to which these terms and conditions apply by giving notice to the Contractor. If less than 24 hours' notice is given, the Contractor reserves the right to charge an administration fee, and any reasonable costs for time and travel incurred by the Contractor.

- 14.4. The Contractor reserves the right not to refund any deposit where the Customer has cancelled or terminated a contract.

- 14.5. Cancellation or termination shall only be accepted by the Contractor if provided in writing. The Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).

- 14.6. Cancellation of orders for Service made to the Customer's specifications, or for non-stock list items, will not be accepted once production has commenced, or an order has been placed and any deposit will be forfeited at the sole discretion of the Contractor.

15. General

- 15.1. These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia, the state in which the Contractor has its principal place of business and are subject to the jurisdiction of the courts in that state.
- 15.2. Except as otherwise provided for in these terms and conditions, the Contractor shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach the Contractor of these terms and conditions (alternatively the Contractor liability shall be limited to damages which under no circumstances shall exceed the Price).
- 15.3. The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.
- 15.4. The Contractor may license or sub-contract all or any part of its rights and obligations without the Customer's consent. The Contractor will endeavour to notify the Customer of such license or sub-contracting; however, it is not obliged to do so.
- 15.5. The Contractor will not be liable for any loss or damage to any person or property caused by a third party who has been licensed or sub-contracted by them.
- 15.6. The Contractor makes no assertion to, nor will they be liable for any claims regarding the quality of work provided by any licensed or sub-contracted party.
- 15.7. The Customer agrees that the Contractor may amend these terms and conditions at any time. If the Contractor makes a change to these terms and conditions, then that change will take effect from the date on which the Contractor notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Contractor to provide Service to the Customer.
- 15.8. 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.
- 15.9. The Customer 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.