

1. Definitions.

The following definitions are incorporated into and form part of this Contract.

- 1.1. "Conditions" means these "Terms & Conditions of Purchase".
- 1.2. "Contract" means the Purchase Order and these incorporated Conditions.
- 1.3. "Company" means Williams Electrical Service Pty Ltd (ABN 78 008 779 397) or any one or more of its related bodies corporate or associated businesses.
- 1.4. "Supplier" means the person, firm or company (incorporated or not) by whom the goods or services (the Works) are being supplied.
- 1.5. "Works" means all services, goods and chattels, and all charges for work and labour done, hire charges, fees, service charges, taxes, repairs, materials, insurance charges of any nature, associated with the supply and manufacture, construction or repair of the goods supplied to the Company and these Conditions shall relate to any such charge imposed on the Company by the Supplier.
- 1.6. "Price" means the price set out in the Purchase Order for the Works which is exclusive of GST but inclusive of all other cost and charges, including taxes, packing, insurance, handling and delivery of the goods and the cost of any item used or supplied in the performance of the Works.
- 1.7. "Purchase Order" means the Purchase Order for the Works issued by the Company to the Supplier from time to time containing, amongst other things, a description of the Works.
- 1.8. "Defective" means Works (or any aspect of them) which are not in accordance with the Purchase Order or which are damaged, deficient, faulty, inadequate or

- 1.9. Nothing in these Conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Competition and Consumer Act 2010 (as amended) and the Fair Trading Act 2010 (as amended)).
- 1.10. Words denoting persons shall also denote companies and words denoting the singular shall include the plural and vice versa.

2. Engagement of Supplier.

- 2.1. The Supplier has made the Company an offer to supply the Works as described in the Purchase Order in accordance with the Conditions.
- 2.2. This Agreement is made on acceptance in writing by both Parties.
- 2.3. Notwithstanding the Supplier does not acknowledge the Purchase Order in writing or its acceptance of these Conditions, commencement of any Works shall constitute acceptance of the Purchase Order and these Conditions.
- 2.4. To the extent the Supplier's terms and conditions are supplied with the Works (including as printed on consignment notes or other documents), those terms and conditions will be of no legal effect and will not constitute part of, or supersede, this Purchase Order and Conditions (even if any representative of the Company signs those terms and conditions or annexes the terms and conditions to this Purchase Order).
- 2.5. These Conditions apply to the supply of the Works pursuant to a Purchase Order unless a written agreement executed by the Company and the Supplier covering the

supply of the Works applies. Any special conditions noted on the Purchase Order are an integral part of the Purchase Order and form part of the Purchase Order. In the event of inconsistency, the special conditions will prevail.

- 2.6. Acceptance of this Purchase Order binds the Supplier to the same contract conditions as applicable to the Company. The contract conditions can be viewed upon request at the office of the Company (if applicable).
- 2.7. A written contract is required by law for any home building work. If required by law, the Supplier will provide the Company with a certificate of home warranty insurance before starting the Works and before demanding payment.

3. The Company may direct priority of tasks.

- 3.1. The Company may direct the Supplier at any time in relation to the priority of tasks and the order in which they are to be performed in providing the Works.
- 3.2. The Supplier must comply with any direction. The Supplier is however not subject to the control or direction of the Company to any extent in relation to the manner, form or method in which the Works are provided.

4. Works to be provided with due skill. Standard of Work

- 4.1. The Supplier will at all times hold the required current and valid licenses and will carry out the Works in a proper and workmanlike manner and in accordance with the plans and specifications (if any), all relevant Australian Standards and laws in force at the date of the performance of the Works, including the current edition of AS/NZS 3000 Wiring Rules.

- 4.2. The Supplier will complete the Works with due care and skill, and in accordance with the requirements of the Purchase Order and/or the program provided by the Company.
- 4.3. The Company may request the Supplier to perform the Works at other times and within an accelerated period. If the Supplier agrees to the Company's request, the Company will vary the Price to include any additional costs and expenses incurred by the Supplier in performing the Works, including any additional labour rates for the Supplier's employees.
- 4.4. The Supplier will be entitled to an extension of time to complete the Works if an event occurs which is outside of the Supplier's control which causes a delay to the completion of the Works (including fire, flood, force majeure and Government intervention), but excluding material and/or labour shortages or other lack of resources on the part of the Supplier. Any extension of time and/or revised estimated completion date shall be agreed upon by the parties.
- 4.5. The Supplier acknowledges that the Supplier has taken all due care to ensure that the goods and/or materials supplied as part of the Works are the correct type, size, rating, standard, quality, colour, finish and meet the Company's requirements and specifications, if any, (including any drawings) referred to in the Purchase Order.

Quality

- 4.6. If the Supplier gave the Company a sample of the goods or a demonstration of the services, the goods and/or services must be of the same nature and quality as the sample or demonstrations given.

- 4.7. The Supplier will supply the materials which will be of suitable standard for the purpose for which they are intended and match the description (if any) referred to in the Purchase Order. Unless otherwise specified, all materials will be new.
- 4.8. All Works are subject to inspection and test by the Company when specified, either at the Supplier's premises or immediately after delivery. Where requested by the Company, the Supplier shall provide test certificates.
- 4.9. Where the Works or part thereof do not comply with the standards required by the Purchase Order, the Company shall be entitled to:
- Instruct the Supplier to resupply the Works or part thereof; or
 - Instruct a third party to supply the Works; or
 - Provide the Works itself.
- 4.10. The Company will be entitled to recover all costs incurred or loss suffered as a result of exercising its rights under this clause. Any amounts due from the Supplier to the Company under this clause will be immediately due and payable.
- 5. Delivery.**
- 5.1. The Supplier shall deliver the Works strictly in accordance with the shipping instruction and/or dates required in the Purchase Order.
- 5.2. Transport arrangements and costs are the responsibility of the Supplier. Immediately upon shipment, the Supplier is to notify the Company of shipping and routing information. The Supplier will, at its own cost, hold goods in store as required, to meet any specified delivery date.
- 5.3. Hoisting and off-loading are the responsibilities of the Supplier whenever the Supplier is required under the Purchase Order to install or erect plant, materials or equipment.
- 6. Risk and Title.**
- 6.1. Title in the Works passes to the Company upon the earlier of payment of the Price or delivery of the Works in accordance with the Purchase Order.
- 6.2. Risk in the Works passes to the Company when the Works are delivered in accordance with the Purchase Order.
- 7. Credits.**
- 7.1. The Company reserves the right to return goods for credit without penalty. The Supplier will be liable for all costs incurred including packaging and freight costs for goods that are deemed to be noncompliant, defective, damaged, incorrectly or oversupplied.
- 8. Making Good Damage to Property.**
- 8.1. The Works do not include making good any damage caused by the Supplier to property, including any damage to finished surfaces, ceiling, tiles, panels, face brickwork, walls and rendered surfaces. The Supplier is responsible for making good any damage to property.
- Cleaning Up**
- 8.2. On completion, the Supplier will remove from the site all plant, equipment and rubbish relating to the Works. All demolished and surplus materials are the Supplier's property unless otherwise agreed with the Company.
- 9. Documentation.**
- 9.1. All documentation must show the Company's Purchase Order number, a full description of the Works and where requested specification of the materials.
- 9.2. Packing lists/delivery dockets must accompany each shipment.
- 9.3. If certified drawings are requested in the Purchase Order, the Supplier shall supply certified drawings to the Company within 14 days of receipt of the Purchase Order.
- 9.4. If operating and maintenance instructions are requested by the Company, five copies of the operating and maintenance instructions shall be supplied within 4 weeks of receipt of the Purchase Order. No payment shall be made under the Purchase Order until such instructions have been received.
- 10. Supplier's Staff and Subcontracting.**
- 10.1. This Contract is governed by the laws of Western Australia and the parties hereby submit to the exclusive jurisdiction of Western Australia.
- 10.2. This Contract constitutes the entire agreement and understanding between the parties and supersedes any prior agreement (whether in writing or not), negotiations, discussions, understandings and agreements between the parties in relation to the subject matter of this Contract.
- 10.3. No variation, modification or waiver of any provision in this Contract, nor consent to any departure by any party from any provision, will be of any effect unless it is in writing, signed by the parties or in the case of a waiver, by the party giving it. No party can assign this Contract without the prior written consent of the other party.
- 10.4. The Supplier may not enter into any subcontract in relation to this Contract without the Company's prior consent.
- 10.5. The Supplier may employ persons to perform any part or all of the Works provided personnel acceptable to the Company are used to carry out the Works. The personnel must have the necessary expertise and qualifications to perform the Works.
- 10.6. The Supplier and its personnel are not entitled to any annual leave, sick leave, long service leave, public holidays, redundancy payments or any other similar employee benefits from the Company and is wholly responsible for providing any such benefits to employees of the Supplier.
- 11. Payment.**
- 11.1. In consideration of the Supplier supplying the goods, materials and performing the Works, the Company will pay the Supplier the Price, which will be adjusted in accordance with the provisions of this Contract.
- 11.2. No claim for rise and fall shall be accepted unless rise and fall is shown on the Purchase Order, where it shall be calculated in accordance with the formula shown on the Purchase Order.
- Payment Terms, Retention and Set- Off**
- 11.3. Unless otherwise stated on the Purchase Order, referenced documents or in accordance with the relevant clauses of the Contract between the Company and the Supplier, the Company shall pay the Supplier's invoices under the following terms:
- Payment shall be made to the Supplier by the Company within thirty (30) calendar days from end of month of the acceptance of the invoice.
 - If the Works program or estimated time of completion does not exceed one (1) calendar month, the Supplier will submit an invoice on completion of the Works.
 - If the Works program or estimated time of completion exceeds one (1) calendar month, the Supplier will be entitled to submit progress claim invoices to the Company at regular intervals, in the Supplier's sole discretion, as and when the Supplier has performed any of its obligations over that period.
 - Invoices and progress claims must be received by the Company no later than the 20th day of the month. Any claims received after this date will not be considered until the following month.
 - Unless provided for otherwise in this Contract, the Company will make payment for the Works when the whole of any works identified in the Purchase Order is complete. Payment shall not constitute acceptance by the Company that the Works are not defective.
 - All invoices shall be correctly rendered. An invoice will be correctly rendered if it identifies the Supplier's ABN, the Company's Purchase Order and the Works as per the Purchase Order.
 - An invoice not

- correctly rendered, deemed noncompliant and/or is not due for payment (ie Works not delivered or completed) will be returned to the Supplier.
- (h) Payment may be withheld if the Supplier owes any amount which is, or may become, payable to the Company or is in breach of any of the Conditions until the breach is resolved.
- 11.4. Progress payments and retention monies will be in accordance with relevant clauses of the Contract.
- 11.5. The Supplier is not entitled to set off any amounts owing or due to the Supplier by the Company against any amounts owing or due to the Company. The Supplier is not entitled to payment for a period during which it fails or is unable for any reason to perform all or part of the Works or obligations.
- 12. Conflict of Interest.**
- 12.1 The Supplier is free to provide services to others. However, the Supplier and/or its personnel must not become involved in any trade, business, or contract which, in the reasonable opinion of the Company may constitute a conflict of interest, or interfere with the Supplier's obligation to perform the Works.
- 13. Confidentiality and Intellectual Property.**
- Confidentiality**
- 13.1 The Supplier must not disclose the contents of this Contract or any of the Company's technical, operational, pricing or other commercially confidential information relating to the Works to any third party without the Company's prior written consent, which may be withheld at the Company's absolute discretion.
- Intellectual Property**
- 13.2 In this clause, intellectual property right means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields.
- 13.3 The Supplier warrants that any designs, materials and documents provided to the Company do not infringe any intellectual property rights. The Supplier will fully indemnify the Company against any loss incurred by the Company arising from, or in connection with, any claim by a third party against the Company alleging infringement of their intellectual property rights in connection with anything the Supplier has provided to the Company.
- 13.4 The Company own all right, title and interest, including all intellectual property rights in any material the Supplier produces under this Contract upon its creation. The Supplier must not infringe the Company's intellectual property rights without the Company's prior written consent, which may be withheld at the Company's absolute discretion.
- 14. The Supplier's duty to arrange Insurance.**
- 14.1 The Supplier confirms the Supplier has current insurance cover for:
- (a) professional indemnity, public liability and products liability insurance to cover liability to third parties for death or personal injury or damage to property for an amount not less than \$10,000,000 for any one occurrence; and
- (b) workers' compensation insurance to cover the Supplier's employees; and
- (c) materials, plant and equipment insurance including all constructional plant and equipment and goods to be supplied for not less than full replacement value; and
- (d) transit (all risk) insurance covering transit, loading and unloading of goods for not less than the full replacement value; and
- (e) personal accident insurance for self-employed contractors; and
- (f) insurances specified by the Company in the Purchase Order, or where not specified, in accordance with usual industry standards; and
- (g) any other insurance which is required by law for the time being in force in the state where the Works are to be provided.
- 14.2 Any insurance affected by the Company in relation to the Works covers the Company's interests only.
- 14.3 In respect of workers' compensation, the Supplier shall hold and maintain a workers' compensation policy in respect of any liability pursuant to the Workers' Compensation and Injury Management Act 1981 and shall ensure that the policy provides:
- (a) Indemnity to the Company as principal (principal's indemnity extension); and
- (b) A waiver of subrogation in favour of the Company.
- 14.4 Except for professional indemnity, the Supplier will maintain such insurance for the Works until the earlier of the completion of the Works or the termination of this Contract (Completion). Professional Indemnity shall be maintained for a period of six years after Completion
- 14.5 The Supplier will provide the Company with proof of currency of the Supplier's insurances including compliance with the terms and conditions of this Contract on the Company's request.
- 15. Warranties.**
- 15.1 The Supplier warrants that the Works:
- (a) are supplied free of all mortgages, liens, encumbrances or other restrictions to title; and
- (b) comply in all respects to the Contract, specifications, drawings and representations by the Supplier; and are new (unless agreed to in writing by the Company), and are free from any defects; and
- (c) comply will all applicable standards, laws, by-laws statutes, regulations and regulatory bodies; and
- (e) are fit and safe for the purpose; and
- (f) will be carried out with due care and diligence by suitably trained personnel; and
- (g) comply with all Conditions of this Contract.
- 16. Supplier's Indemnity.**
- 16.1 The Supplier must indemnify the Company, Company directors, officers and employees from and against liability for all loss, damage or injury to persons or property arising directly or indirectly with this Contract or in connection with the Works, and which has been caused by the Supplier, the Supplier's servants, employees, agents or contractors, including for any loss suffered by any of them.
- Claims and limitations of liability**
- 16.2 Any claim which the Supplier may have against the Company will be deemed to be waived if the claim is not made in writing within ten (10) working days from the date of the event giving rise to the claim.
- 16.3 The Company will not be liable to the Supplier in contract or in tort or otherwise for any special or indirect damages or loss of profit resulting from, or arising in connection with, this Contract or the performance of the Works (if any), including any delay, breach of contract or any negligent act or omission by the Company, the Company's agents or employees.
- 16.4 The Company's liability to the Supplier for any loss, costs, expenses or damage arising from, or in connection with, this Contract or the performance of the Works (if any), including any delay, breach of contract or any negligent act or omission by the Company, the Company's agents or employees, is limited to the amount equal to the Price.
- 16.5 The Supplier's liability to the Company for any loss, costs, expenses or damage arising from, or in connection with, this Contract or the

performance of the Works (if any), including any delay, breach of contract or any negligent act or omission by the Supplier, the Supplier's agents or employees, is limited to the amount equal to the Price.

17. Termination and Breach.

Termination

17.1 If the Supplier breaches a term of this Contract, then for such period as the Supplier is in breach the Company may suspend the performance of the Works.

17.2 The Company may terminate this Contract by written notice to the Supplier if:

- (a) The Supplier is placed under administration, go into liquidation or is declared bankrupt; or
- (b) The Supplier breaches a term of this Contract and the Supplier does not remedy the breach within ten (10) working days of being notified by the Company to do so.
- (c) The Company terminates the Contract for its convenience by providing the Supplier with 30 days written notice. In such case, the Supplier shall be only entitled to payment for all Works performed prior to the date of termination and waive any claims for lost profits and all other damages and expenses.

17.3 The Supplier may terminate this Contract by written notice to the Company if:

- (a) The Company is placed under administration, go into liquidation or is declared bankrupt; or
- (b) The Company breaches a term of this contract and the Company does not remedy the breach within 10 working days of being asked by the Supplier to do so; or
- (c) Asbestos, contamination or other toxic substances which pose a risk to health and safety are present at the site,

- or
- (d) The Supplier terminates the Contract for its convenience by providing the Company with 30 days written notice. In such case, the Company shall only be liable to payment to the Supplier for all Works performed prior to the date of termination and waive any claims for lost profits and all other damages and expenses.

Breach

17.4 The Supplier must pay to the Company all costs incurred by the Company, including legal fees, on a full indemnity basis in consequence of, or in connection with, any default by the Supplier under this Contract and in the enforcement or attempted enforcement by the Company of any of the Company's rights or remedies in relation to any default.

18. Dispute resolution.

18.1 In the event of any dispute or difference arising between the Supplier and the Company, whether during the progress of the Works or after completion, termination, determination, abandonment or breach of this Contract as to the construction of this Contract or any matter or thing whatsoever nature arising under, out of or in connection with the Contract, then each party may give to the other notice in writing of such dispute or difference giving particulars thereof and unless the same shall be settled within seven (7) calendar days after receipt of such notice then such dispute or difference shall be and is hereby referred to arbitration of the person nominated by the president for the time being of the Electrical and Communications Association of WA.

18.2 Each party may be represented by a solicitor or other legal representative in any arbitration proceedings.

18.3 Any award made by the arbitrator shall be final and binding on both parties. Any claim for

damages shall be limited to the Price and neither party shall be entitled to commence or maintain any action upon the dispute or difference until the matter has been referred and determined in accordance with this clause.

18.4 Should either party be dissatisfied with the determination of the appointed arbitrator, the parties agree that the extent of any further legal recourse is limited to the amount of relief awarded by the arbitrator and the costs of the arbitration.