

Terms and Conditions of Sale

1. **Orders:** ED may accept or reject any order for Products. Acceptance of an order may be in whole or in part, by delivery of the relevant Products or in such other manner communicated by ED to the Customer, including where the Products are backordered. Where the order value is less than \$55.00 (inclusive of GST), ED may apply a handling fee of \$10.00 (inclusive of GST). Notwithstanding that acceptance of an order has been communicated to the Customer, ED may in its complete discretion refuse to supply the Products (or such part of the Products) at any time. Without limiting any other provision of these Terms, ED is not liable for any loss or claim suffered by the Customer as a consequence of ED taking such action.
2. **Delivery:** Unless otherwise agreed, ED will arrange for the delivery of the Products to the Customer. Risk of loss passes to the Customer on the earliest to occur of collection of the Products by the Customer from an ED branch or other ED specified location; delivery of the Products to the Customer or third party site designated by the Customer; or delivery of the Products by ED to a carrier for the purpose of delivering the Products to the Customer or third party site. Delivery of Products to the Customer will be to a single site, unless otherwise agreed in writing by ED and the Customer. Requests for proof of delivery may only be made within 30 days of the invoice date. If a request is not made within this time, Products are deemed delivered.
3. **Pricing:** Prices for Products are those quoted by ED in writing and are open for the period of time specified in the quotation or 30 days, whichever is the lesser. Otherwise, the prices for Products will be as set out in ED's then current price list. ED may charge delivery fees and storage fees for Products.
4. **Payment:** The Customer must pay for all Products supplied by ED within 30 days after the end of the month in respect of which the invoice relating to the Products is dated or any longer period approved by ED to the Customer. The Customer may not withhold, set-off or otherwise resist payment on any basis. Payment by credit card will incur a transaction fee.
5. **Interest:** ED is entitled to charge the Customer interest on amounts not paid within the specified credit period in an amount equal to 2% of the amount outstanding, calculated monthly from the invoice date until payment of the debt.
6. **Discounts:** In addition to all other rights of ED, if the Customer is in breach of any of its obligations under the Contract, any discounts, including settlement discounts, rebates or other economic benefits provided to the Customer by ED are automatically revoked and the prices for Products will be adjusted upwards accordingly.
7. **GST:** Each amount payable by the Customer under these Terms in respect of a Taxable Supply by ED is a GST exclusive amount and the Customer must, in addition to that amount and at the same time, pay the GST payable in respect of that supply. "Taxable Supply" and "GST" have the meanings set out in the *A New Tax System (Goods and Services) Act 1999* (Cth).
8. **Withdrawal or Variation of Credit:** ED may, at any time, without the need to provide a reason and without any obligation on ED to notify the Customer, increase, decrease or withdraw any credit facilities granted to the Customer.
9. **Ownership:** (a) Title to and ownership of the Products do not pass until the Customer and all Related Bodies Corporate of the Customer have paid all moneys owing to ED on any account in full. (b) Until payment of all such moneys, the Customer holds the Products as fiduciary bailee and agent for ED and must keep the Products physically separate from all other goods of the Customer, and clearly identified as owned by ED. (c) If an Event of Default occurs, then without prejudice to ED's other rights, ED may on providing reasonable notice to the Customer, enter any premises occupied by the Customer or any other place where the Products may be, and recover possession of them. If the Products are on a third party site, the Customer must procure access rights for ED from the controller of the third party site such that ED may enter onto the site and recover and retake possession of them on reasonable notice. (d) If the Customer sells any of the Products while money is owed to ED, the Customer holds the proceeds on trust for ED. Such proceeds shall be deemed to equal in dollar terms such corresponding part of the amount owed by the Customer to ED at the time of receipt. (e) If the Customer uses the Products in some manufacturing or construction process of its own or of some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to such Products in trust for ED. Such proceeds shall be deemed to equal in dollar terms the corresponding amount owing by the Customer to ED at the time of receipt. (f) Until payment of all moneys owing on any account to ED, any proceeds referred to above received by the Customer must be held in a separate account and not mixed with any other funds. (g) The rights of ED under this clause 9 do not limit or exclude any other rights of ED against the Customer.
10. **Charge over Customer's Property:** As security for payment of all moneys payable to ED by the Customer, the Customer charges in favour of ED the whole of the Customer's undertaking, property and assets (including, without limitation, all of the Customer's interests both legal and beneficial in freehold and leasehold land) both current and later acquired. The Customer irrevocably appoints each Officer as its attorney to do all things necessary to register each such charge.
11. **Security Interests:** (a) Terms that are defined in the *Personal Property Securities Act 2009* (Cth) ("PPSA") have the same meaning in this clause. (b) The Customer agrees and acknowledges that, for the purposes of the PPSA, ED has a security interest in the Products and in any right in relation to or derived from the Products and such other undertaking, property and assets of the Customer. (c) ED may register its security interests under clauses 9, 10 and 11. (d) The Customer waives the right to receive a verification statement under the PPSA. (e) The Customer agrees that, if Chapter 4 of the PPSA applies to the enforcement of ED's security interests, the following provisions of the PPSA will not apply to that enforcement: section 95, to the extent that it requires ED to give a notice to the Customer; section 96; section 130, to the extent that it requires ED to give a notice to the Company; subsection 132(3)(d); subsection 132(4); section 135; section 142 and section 143. (f) Subject to subsection 275(7) of the PPSA, neither party may disclose information of the kind referred to in subsection 275(1) of the PPSA.
12. **Suspension or Ceasing of Supply:** (a) ED may in its complete discretion and without incurring any liability to the Customer, cease or suspend supply of Products to the Customer even if an order is part fulfilled. (b) Without limiting sub-clause (a) or any other rights ED has, if an Event of Default occurs ED may, without prejudice to its other rights, call up moneys owed to it by the Customer, retain all moneys paid on account, or cease further deliveries and recover from the Customer all loss of profits arising therefrom, and/or enter onto any premises where Products are located and with the full cooperation and assistance of the Customer and retake possession of any Products. Where the Products are located on a third party site, the Customer must procure access for ED or its representatives.
13. **Liability of ED:** (a) Subject to sub-clauses (b) and (c) below, ED will not be liable for any loss or damage whatsoever suffered by the Customer as a result of any act, omission or statement made by ED, its employees, contractors or agents whether negligent or not, except that nothing in these Terms limits any liability imposed by any statute unless or to the extent that it is lawful to do so. Without limiting the foregoing, any works, including rectification works are at the sole cost and expense of the Customer. (b) In respect of Products supplied by ED to the Customer, subject to sub-clause (d), if the Customer is a Consumer, the liability of ED however caused, suffered or incurred by the Customer because of a failure to comply with a Consumer Guarantee is limited, at ED's option, to replacement of the Product or supply of equivalent Product; repair of the Product; payment of the cost of replacing the Product or acquiring equivalent Product; or payment of the cost of having the Product repaired. (c) In respect of services supplied by ED to the Customer, subject to sub-clause (d), if the Customer is a Consumer, the liability of ED however caused, suffered or incurred by the Customer because of a failure to comply with a Consumer Guarantee is limited, at ED's option, to supplying the services again or payment of the cost of having the services supplied again. (d) Sub-clauses (b) and (c) do not apply if: it is not 'fair and reasonable' for ED to rely on them in accordance with sections 64A(3) and (4) of the Australian Consumer Law; the Products are Consumer Goods; the services are Consumer Services; or the loss arises in relation to any guarantee pursuant to any of sections 51, 52 or 53 of the Australian Consumer Law.
14. **Warranties:** (a) This clause does not apply to a Customer who is a Consumer. Otherwise, the Customer acknowledges and agrees that it has not relied on any representation made by ED which has not been expressly stated in these Terms. Any representation, advice, recommendation, information or assistance provided by ED in relation to the Products supplied or their use or application must not be relied upon by the Customer and the Customer acknowledges and agrees that it is the Customer's responsibility to satisfy itself as to the appropriate use or application of the Products and that the Products are suitable for any particular purpose. Any description of our Products including any specifications, diagrams,

samples or drawings are approximate and are given by way of identification only. Without limiting this sub-clause (a), the use of that description does not constitute a sale by description and does not form part of the Contract. The Customer indemnifies ED against all loss, cost, expense, demand, claim or liability suffered or sustained by ED in connection with any act or omission of the Customer including but not limited to negligence of the Customer or any unauthorised representation made or warranty given by the Customer in connection with the Products. (b) This clause does not apply to a Customer who is a Consumer. Otherwise, the Customer will have no claim for defects in respect of any Products apparent on inspection unless a written complaint is received by ED within 7 days of receipt of the Products by the Customer, which complaint identifies the defect. ED will, at its option, accept the return of, or give a credit for Products where: the Customer has complied with this sub-clause (b); ED is satisfied as to the claim by the Customer; in the case of Products that have at the request of the Customer been specifically sourced, the supplier of such Products will accept return of the Products for credit; and, if ED elects to have the Products returned, the Products are returned to ED in the same condition as when first delivered to the Customer with the relevant invoice number and date of order. ED will not accept the return of or give credit for Products supplied in cut lengths or otherwise fabricated to Customer specifications or requirements. ED may, at its sole discretion, accept the return of, or give credit for, Products that are not damaged or defective if requested by the Customer. All Products returned are subject to a minimum handling charge of 20% of the invoiced price except in the case of defective Products or Products incorrectly supplied. In the case of buy-ins against Customer orders, credit will only be allowed if the original manufacturer/supplier also accepts the return.

15. **Certification:** A statement signed by an Officer certifying the amount of any moneys payable by the Customer or identifying any Products as "unpaid for" is, in the absence of manifest error, conclusive and binding on the Customer. A text or electronic mail message from ED to the Customer constitutes a statement by an Officer for the purposes of this clause.
16. **Notification of Change of Details:** The Customer will notify ED of any change in its ownership, structure or management, including any change of director, shareholder or beneficiaries, or any change in partnership or trusteeship within 7 days of the date of change.
17. **Provision of Financial Information:** The Customer will supply, promptly on request of ED and, in any event no later than 5 days after such a request is made, certified copies of its most recent financial statements (including management accounts, if required), tax returns and any other financial information of the Customer requested by ED.
18. **Intellectual Property:** These Terms do not give the Customer any intellectual property rights in the Products. ED is not liable to the Customer for any infringement or unauthorised use of intellectual property rights.
19. **Effect of Other Terms:** These Terms supersede all previous terms and conditions between ED and the Customer. No terms of the Customer apply to any agreement between the Customer and ED.
20. **Amendment to Terms:** ED may amend these Terms from time to time without reference to the Customer and such Terms, as amended, will apply from such date. The current Terms are available on the ED website at electricaldistributors.com.au. The Customer agrees that any orders placed with ED are subject to the Terms displayed on the website as at the date the order is accepted by ED.
21. **Expenses:** The Customer must pay to ED any costs, charges and expenses (including all stamp duty and legal fees calculated on a full indemnity basis) incurred by ED in connection with the entry into these Terms, the exercise or attempted exercise of any power, right or remedy under these Terms, and the failure of the Customer to comply with these Terms.
22. **Trusts:** These Terms bind the Customer both personally and as trustee of any trusts of which the Customer is trustee.
23. **Severance:** Each clause and sub-clause of these Terms is separate and independent. If any clause or sub-clause is found to be invalid or ineffective, the other clauses or sub-clauses or parts will not be adversely affected.
24. **Application of Laws:** The parties submit to the non-exclusive jurisdiction of the courts of Western Australia and agree that the law applying to Western Australia is the proper law governing these Terms.
25. **Set-Off:** ED may set-off amounts owing by ED to the Customer or the Customer's Related Bodies Corporate against moneys owing by the Customer to ED on any account. ED's right of set-off does not exclude or limit the Customer's obligations (including to pay) in any way. The Customer may not set-off.
26. **Assignment:** ED may assign the Contract without the prior written consent or knowledge of the Customer.
27. **Definitions:** In these Terms unless the context requires otherwise: (a) "Australian Consumer Law" means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and the corresponding provisions of the relevant State Fair Trading Acts; "Consumer" has the meaning given to it in the Australian Consumer Law; "Consumer Goods" means goods of a kind ordinarily acquired for personal, household or domestic use or consumption, as that expression is used in the Australian Consumer Law; "Consumer Guarantee" means the guarantees provided in Chapter 3, Division 1 of the Australian Consumer Law; and "Consumer Services" means services of a kind ordinarily acquired for personal, household or domestic use or consumption, as that expression is used in the Australian Consumer Law; (b) "Event of Default" means any of the following events: (i) the Customer fails to pay for the Products; (ii) the Customer is in breach of these Terms; (iii) if the Customer is a company: an order is made or a resolution is effectively passed for winding up of the Customer; the Customer resolves to appoint a receiver or provisional liquidator or an administrator, or a receiver or provisional liquidator or an administrator is appointed; the Customer goes into liquidation or makes an assignment or an arrangement or composition with its creditors; the Customer stops payment or is deemed unable to pay its debts within the meaning of the *Corporations Act 2001* (Cth); (iv) if the Customer is a natural person, an order is made for the Customer's bankruptcy, or the Customer dies or becomes mentally or physically incapable of managing his or her affairs or an order is applied for or made to place the assets and affairs of the Customer under administration (v); the Customer ceases or threatens to cease carrying on business; (vi) ED forms an opinion, on a reasonable basis, that any of the foregoing are likely to occur (c) "Officer" means each director, secretary, manager and authorised representative of ED; (d) "ED" means Electrical Distributors of W.A. Pty Ltd ACN 009 356 727 and its Related Bodies Corporate or any one or more of them as the context permits or requires; (e) "Products" means all goods and/or services (including delivery and cutting services) supplied or to be supplied by ED to the Customer; (f) "Related Bodies Corporate" has the same meaning as in the *Corporations Act 2001* (Cth).
28. **Related Bodies Corporate:** The Customer acknowledges that: (a) ED enters this Contract on its own behalf and for the benefit of each of ED's related bodies corporate, as that phrase is defined in the *Corporations Act 2001* (Cth), or any one or more of them as the context permits or requires ("ED Group"); (b) the benefit of this Contract is held by ED on its own behalf and on trust for each ED Group member; (c) ED may enforce and recover under this Contract for and on behalf of any ED Group member; (d) ED is free to make any amendments to these Terms without reference to an ED Group member.