



# SCOTT ELECTRICS

## Switched On

**Scott Electrics Pty Ltd**

### **Terms of Trade**

Correct as at **1 October 2016** and to be reviewed no less than annually.

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## **1. Definitions**

1.1 “Contractor” shall mean Scott Electrics Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Scott Electrics Pty Ltd.

1.2 “Client” shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Contractor to the Client.

1.3 “Guarantor” means that person (or persons) who agrees to be liable for the debts of the Client on a principal debtor basis.

1.4 “Materials” shall mean all Materials supplied by the Contractor to the Client (and where the context so permits shall include any supply of Works as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Contractor to the Client.

1.5 “Works” shall mean all Works supplied by the Contractor to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Materials as defined above).

1.6 “Contract Price” shall mean the Price payable for the Materials as agreed between the Contractor and the Client in accordance with clause 4 of this contract.

## **2. The Commonwealth Trade Practices Act 1974 (“TPA”) and Fair Trading Acts (“FTA”)**

2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.

2.2 Where the Client buys Materials as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer’s statutory rights.

## **3. Acceptance**

3.1 Any instructions received by the Contractor from the Client for the supply of Materials and/or the Client’s acceptance of Materials supplied by the Contractor shall constitute acceptance of the terms and conditions contained herein.

3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Contract Price.

3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Contractor.

3.4 The Client shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, email address or business practice). The Client shall be liable for any loss incurred by the Contractor as a result of the Client's failure to comply with this clause.

3.5 Materials are supplied by the Contractor only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

3.6 The Contractor has described the extent of the Works on the face side of this document based on their inspection of the site and/or on information and instructions provided by the Client. The Client acknowledges and accepts that the actual extent and value of the Works may change as more evidence becomes available to the Contractor.

#### **4. Contract Price and Payment**

4.1 At the Contractor's sole discretion the Contract Price shall be either:

(a) as indicated on invoices provided by the Contractor to the Client in respect of Materials supplied and work completed; or

(b) the Contractor's quoted Contract Price (subject to clause 3.2) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within thirty (30) days.

4.2 At the Contractor's sole discretion payment shall be due on delivery of the Materials and/or works completed.

4.3 The Contractor may submit detailed progress payment claims in accordance with the Contractor's specified payment schedule. Such payment claims may include the reasonable value of authorised variations and the value of any materials delivered to the site but not yet installed.

4.4 Time for payment for the Materials and/or works completed shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.

4.5 Payment will be made by cash, or by bank cheque, or by bank deposit, or by credit card, or by any other method as agreed to between the Client and the Contractor. Payments via credit card will incur a surcharge of up to three percent (3%) of the Contract Price if the Contract Price is greater than \$5,000.

4.6 GST and other taxes and duties that may be applicable shall be added to the Contract Price except when they are expressly included in the Contract Price.

4.7 The Contract Price includes cleaning of the site on completion of the Works as appropriate for the stage of the Works.

## **5. Delivery of Materials**

5.1 At the Contractor's sole discretion delivery of the Materials shall take place when:

- (a) the Client takes possession of the Materials at the Contractor's address; or
- (b) the Client takes possession of the Materials at the Client's nominated address (in the event that the Materials are delivered by the Contractor or the Contractor's nominated carrier).

5.2 The Client shall make all arrangements necessary to take delivery of the Materials whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Materials as arranged then the Contractor shall be entitled to charge a reasonable fee for redelivery.

5.3 The failure of the Contractor to deliver shall not entitle either party to treat this contract as repudiated.

5.4 The Contractor shall not be liable for any loss or damage whatsoever due to failure by the Contractor to deliver the Materials (or any of them) promptly or at all, where due to circumstances beyond the control of the Contractor.

## **6. Risk**

6.1 If the Contractor retains ownership of the Materials nonetheless, all risk for the Materials passes to the Client on delivery.

6.2 If any of the Materials are damaged or destroyed following delivery but prior to ownership passing to the Client, the Contractor is entitled to receive all insurance proceeds payable for the Materials. The production of these terms and conditions by the Contractor is sufficient evidence of the Contractor's rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiries.

6.3 Where the Client expressly requests the Contractor to leave Materials outside the Contractor's premises for collection or to deliver the Materials to an unattended location then such Materials shall be left at the Client's sole risk and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all.

6.4 Prior to the Contractor commencing any works the Client must advise the Contractor of the precise location of all known Asbestos/Hazardous Materials on the worksite and clearly mark the same. Removal from the worksite and the disposal of Asbestos/Hazardous Materials shall at all times be the Client's responsibility unless otherwise agreed in writing.

6.5 In the event that the Contractor discovers Asbestos/Hazardous Materials whilst undertaking any works the Contractor shall immediately advise the Client of the same and shall be entitled to suspend the works pending a risk assessment in relation to those materials. The Client shall be liable for all additional costs incurred by the Contractor (howsoever arising) as a result of the discovery of Asbestos/Hazardous Materials and/or any suspension of works in relation thereto.

## **7. Damages**

7.1 The Contractor will make good any loss or damage to the work or property of the Client caused by the Contractor's employees, agents or subcontractors. The Client must remove any furniture or Materials from the vicinity of the work to minimise the risk of damage.

## **8. Hidden Cables & Services**

8.1 Prior to the Contractor commencing any work the Client must advise the Contractor of the precise location of all hidden cables and services on the site and clearly mark the same. The hidden cables & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, sprinkler pipes and any other services that may be on site.

8.2 Whilst the Contractor will take all care to avoid damage to any hidden cables and services the Client agrees to indemnify the Contractor in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 8.1.

## **9. Title**

9.1 The Contractor and the Client agree that ownership of the Materials shall not pass until:

- (a) the Client has paid the Contractor all amounts owing for the particular Materials; and
- (b) the Client has met all other obligations due by the Client to the Contractor in respect of all contracts between the Contractor and the Client.

9.2 Receipt by the Contractor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Contractor's ownership or rights in respect of the Materials shall continue.

9.3 It is further agreed that:

- (a) where practicable the Materials shall be kept separate and identifiable until the Contractor shall have received payment and all other obligations of the Client are

met; and

(b) until such time as ownership of the Materials shall pass from the Contractor to the Client the Contractor may give notice in writing to the Client to return the Materials or any of them to the Contractor. Upon such notice the rights of the Client to obtain ownership or any other interest in the Materials shall cease; and

(c) the Contractor shall have the right of stopping the Materials in transit whether or not delivery has been made; and

(d) if the Client fails to return the Materials to the Contractor then the Contractor or the Contractor's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Materials are situated and take possession of the Materials; and

(e) the Client is only a bailee of the Materials and until such time as the Contractor has received payment in full for the Materials then the Client shall hold any proceeds from the sale or disposal of the Materials, up to and including the amount the Client owes to the Contractor for the Materials, on trust for the Contractor; and

(f) the Client shall not deal with the money of the Contractor in any way which may be adverse to the Contractor; and

(g) the Client shall not charge the Materials in any way nor grant nor otherwise give any interest in the Materials while they remain the property of the Contractor; and

(h) the Contractor can issue proceedings to recover the Contract Price of the Materials sold notwithstanding that ownership of the Materials may not have passed to the Client; and

(i) until such time that ownership in the Materials passes to the Client, if the Materials are converted into other products, the parties agree that the Contractor will be the owner of the end products.

## **10. Personal Property Securities Act 2009 (“PPSA”)**

10.1 In this clause:

(a) financing statement has the meaning given to it by the PPSA;

(b) financing change statement has the meaning given to it by the PPSA;

(c) security agreement means the security agreement under the PPSA created between the Client and the Contractor by these terms and conditions; and

(d) security interest has the meaning given to it by the PPSA.

10.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions:

- (a) constitute a security agreement for the purposes of the PPSA; and
- (b) create a security interest in:
  - (i) all Materials previously supplied by the Contractor to the Client (if any);
  - (ii) all Materials that will be supplied in the future by the Contractor to the Client.

10.3 The Client undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Contractor may reasonably require to:
  - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - (ii) register any other document required to be registered by the PPSA; or
  - (iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);
- (b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Materials charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of the Contractor;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials in favour of a third party without the prior written consent of the Contractor; and
- (e) immediately advise the Contractor of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.

10.4 The Contractor and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

10.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.



10.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

10.7 Unless otherwise agreed to in writing by the Contractor, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.

10.8 The Client shall unconditionally ratify any actions taken by the Contractor under clauses 10.3 to 10.5.

## **11. Security and Charge (Applicable to Commercial Works only)**

11.1 Despite anything to the contrary contained herein or any other rights which the Contractor may have howsoever:

(a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Contractor or the Contractor's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Contractor (or the Contractor's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.

(b) should the Contractor elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis.

(c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Contractor or the Contractor's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause.

## **12. Defects**

12.1 The Contractor shall rectify (at the Contractor's own expense) any defects or omissions in the Works that have become apparent within thirteen (13) weeks of the date that the Client is advised that the Works have been completed, provided that the Client has notified the Contractor in writing of any such defects or omissions no later than ten (10) business days after the expiry of that thirteen (13) week period.

12.2 The Contractor shall remedy any defects brought to the Contractor's attention under clause 12.1 within thirty (30) days of receiving such notification in writing.

## **13. Warranty**

13.1 Subject to the conditions of warranty set out in clause 13.2 the Contractor warrants

that if any defect in any workmanship of the Contractor becomes apparent and is reported to the Contractor within seven (7) months of the date of delivery (time being of the essence) then the Contractor will either (at the Contractor's sole discretion) replace or remedy the workmanship.

13.2 The conditions applicable to the warranty given by clause 13.1 are:

(a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:

- (i) failure on the part of the Client to properly maintain any Materials; or
- (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Contractor; or
- (iii) any use of any Materials otherwise than for any application specified on a quote or order form; or
- (iv) the continued use of any Materials after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- (v) fair wear and tear, any accident or act of God

(b) the warranty shall cease and the Contractor shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Contractor's consent.

(c) in respect of all claims the Contractor shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.

13.3 For Materials not manufactured by the Contractor, the warranty shall be the current warranty provided by the manufacturer of the Materials. The Contractor shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials.

#### **14. Default and Consequences of Default**

14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

14.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by the Contractor.

14.3 If the Client defaults in payment of any invoice when due, the Client shall

indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in pursuing the debt including legal costs on a solicitor and own client basis and the Contractor's collection agency costs.

14.4 Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment) the Contractor may suspend or terminate the supply of Materials to the Client and any of its other obligations under the terms and conditions. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.

14.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.

## **15. Compliance with Laws**

15.1 The Client and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works.

15.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the works.

15.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

## **16. Cancellation**

16.1 The Contractor may cancel all or any part of this contract (Subject to clause 16.2) if the Client:

- (a) fails to make payment due under this contract; or
- (b) denies the Contractor access to the worksite to complete or undertake any Works; or
- (c) become insolvent, goes into liquidation or administration.

16.2 Where the Contractor believes that the defaults in clause 16.1 can be rectified then the Contractor shall advise the Client in writing that they have five (5) working days (from the date of the letter) in which to do so. If the Client fails to rectify any default within that period then the Contractor shall advise the Client in writing that they are cancelling the contract.

16.3 If the contract is ended under this clause, the Contractor shall be entitled to a

reasonable Contract Price for the Works carried out under this contract to the date the contract is ended (including the cost of any Materials delivered to the worksite or already ordered from suppliers but not yet paid for by the Client).

### **17. Privacy Act 1988**

17.1 The Client and/or the Guarantor/s (herein referred to as the Client) agree for the Contractor to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by the Contractor.

17.2 The Client agrees that the Contractor may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a) to assess an application by the Client; and/or
- (b) to notify other credit providers of a default by the Client; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Client. The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

17.3 The Client consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

17.4 The Client agrees that personal credit information provided may be used and retained by the Contractor for the following purposes (and for other purposes as shall be agreed between the Client and Contractor or required by law from time to time):

- (a) the provision of Materials; and/or
- (b) the marketing of Materials by the Contractor, its agents or distributors; and/or
- (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Materials; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Materials.

17.5 The Contractor may give information about the Client to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Client;
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

17.6 The information given to the credit reporting agency may include:

- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
- (b) details concerning the Client's application for credit or commercial credit and the amount requested;
- (c) advice that the Contractor is a current credit provider to the Client;
- (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- (f) information that, in the opinion of the Contractor, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
- (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
- (h) that credit provided to the Client by the Contractor has been paid or otherwise discharged.

## **18. Building and Construction Industry Security of Payments Act 1999**

18.1 At the Contractor's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.

18.2 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 1999 of New South Wales, except to the extent permitted by the Act where applicable.

## **19. General**

19.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

19.2 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.

19.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.

19.4 The Contractor shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Contractor of these terms and conditions.

19.5 In the event of any breach of this contract by the Contractor the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Contract Price of the Materials.

19.6 The Client shall not be entitled to set off against, or deduct from the Contract Price, any sums owed or claimed to be owed to the Client by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.

19.7 The Contractor may license or sub-contract all or any part of its rights and obligations without the Client's consent.

19.8 The Client agrees that the Contractor may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Contractor notifies the Client of such change. The Client shall be under no obligation to accept such changes except where the Contractor supplies further Materials to the Client and the Client accepts such Materials.

19.9 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.

19.10 The failure by the Contractor to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Contractor's right to subsequently enforce that provision.

**END OF SCOTT ELECTRICS PTY LTD TERMS OF TRADE.**