

RF Electrical Pty Ltd – Terms & Conditions of Trade

- 1. Definitions**
- 1.1 "RF" shall mean RF Electrical Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of RF Electrical Pty Ltd.
- 1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described in any quotation, work authorisation or other form as provided by RF to the Customer.
- 1.3 "Guarantor" means that person (or persons) who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Goods" shall mean all Goods supplied by RF to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by RF to the Customer.
- 1.5 "Services" shall mean all Services supplied by RF to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the Price payable for the Goods as agreed between RF and the Customer 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 Customer buys Goods 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 RF from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by RF shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of RF.
- 3.4 The Customer shall give RF not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by RF as a result of the Customer's failure to comply with this clause.
- 3.5 Goods are supplied by RF only on the terms and conditions of trade herein to the exclusion of anything that purports to vary the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 4. Price and Payment**
- 4.1 At RF's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by RF to the Customer in respect of Goods supplied; or
- (b) RF's quoted Price (subject to clause 4.2) which shall be binding upon RF provided that the Customer shall accept RF's quotation in writing within thirty (30) days.
- 4.2 RF reserves the right to change the Price in the event of a variation to RF's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties beyond the reasonable control of RF such as hard rock barriers below the surface) will be detailed in writing and charged for on the basis of RF's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 At RF's sole discretion payment shall be due on delivery of the Goods.
- 4.4 RF may submit a detailed payment claim at intervals not less than monthly for work performed up to the end of each month. The value of work so performed shall include the reasonable value of authorised variations and the value of materials delivered to the site but not installed.
- 4.5 At RF's sole discretion payment for approved Customers shall be due thirty (30) days following the date of the invoice.
- 4.6 Time for payment for the Goods 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.
- 4.7 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to five percent (5%) of the Price), or by direct credit, or by any other method as agreed to between the Customer and RF.
- 4.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 4.9 No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, RF reserves the right to take retentions as placing the Customer's account into default.
- 5. Delivery of Goods**
- 5.1 At RF's sole discretion delivery of the Goods shall take place when the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by RF or RF's nominated carrier).
- 5.2 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then RF shall be entitled to charge a reasonable fee for redelivery.
- 5.3 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 5.4 RF may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.5 The failure of RF to deliver shall not entitle either party to treat this contract as repudiated.
- 5.6 RF shall not be liable for any loss or damage whatsoever due to failure by RF to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of RF.
- 6. Risk**
- 6.1 If RF retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, RF is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by RF is sufficient evidence of RF's rights to receive the insurance proceeds without the need for any person dealing with RF to make further enquiries.
- 6.3 Where the Customer expressly requests RF to leave Goods outside RF's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all.
- 6.4 Where the Customer has supplied materials for RF to complete the works, the Customer acknowledges its complete responsibility for the suitability of purpose, quality and any faults inherent in the materials. RF shall not be responsible for any defects in the works, any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Customer.
- 7. Customer Responsibilities**
- 7.1 Where it is agreed that the Customer shall supply scaffolding, it shall be the Customer's responsibility to erect the scaffolding to enable the works to be undertaken at the scheduled commencement date (where in RF's opinion scaffolding is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed.
- 7.2 The Customer shall ensure that RF has clear and free access to the work site at all times to enable them to undertake the works. RF shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of RF.
- 8. Underground Locations**
- 8.1 Prior to RF commencing any work the Customer must advise RF of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer 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, and any other services that may be on site.
- 8.2 Whilst RF will take all care to avoid damage to any underground services the Customer agrees to indemnify RF 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 RF and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid RF all amounts owing for the particular Goods; and
- (b) the Customer has met all other obligations due by the Customer to RF in respect of all contracts between RF and the Customer.
- 9.2 Receipt by RF 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 RF's ownership or rights in respect of the Goods shall continue.
- 9.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until RF shall have received payment and all other obligations of the Customer are met; and
- (b) until such time as ownership of the Goods shall pass from RF to the Customer RF may give notice in writing to the Customer to return the Goods or any of them to RF.
- Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
- (c) RF shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- (d) if the Customer fails to return the Goods to RF then RF or RF's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods; and
- (e) the Customer is only a bailee of the Goods and until such time as RF has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to RF for the Goods, on trust for RF; and
- (f) the Customer shall not deal with the money of RF in any way which may be adverse to RF; and
- (g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of RF; and
- (h) RF can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
- (i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that RF 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 Customer and RF 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 Customer 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 Goods previously supplied by RF to the Customer (if any);
- (ii) all Goods that will be supplied in the future by RF to the Customer.
- 10.3 The Customer 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 RF 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, RF 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 Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of RF;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of RF; and
- (e) immediately advise RF of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.4 RF and the Customer 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 Customer 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 Customer 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 RF, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Customer shall unconditionally ratify any actions taken by RF under clauses 10.3 to 10.5.
- 11. Security and Charge**
- 11.1 Despite anything to the contrary contained herein or any other rights which RF may have however:
- (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer 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 RF or RF's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that RF (or RF'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 RF elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify RF from and against all RF's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint RF or RF's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 11.1.
- 12. Defects**
- 12.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify RF of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford RF 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 shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which RF has agreed in writing that the Customer is entitled to reject, RF's liability is limited to either (at RF's discretion) replacing the Goods or repairing the Goods except where the Customer has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (Cwth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the Customer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.
- 12.2 Goods will not be accepted for return other than in accordance with 12.1 above.
- 13. Warranty**
- 13.1 Subject to the conditions of warranty set out in clause 13.2 RF warrants that if any defect in any workmanship of RF becomes apparent and is reported to RF within twelve (12) months of the date of delivery (time being of the essence) then RF will either (at RF'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 Customer to properly maintain any Goods; or
- (ii) failure on the part of the Customer to follow any instructions or guidelines provided by RF; or
- (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
- (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- (v) fair wear and tear, and accident or act of God.
- (b) the warranty shall cease and RF shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without RF's consent.
- (c) in respect of all claims RF shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 13.3 For Goods not manufactured by RF, the warranty shall be the current warranty provided by the manufacturer of the Goods. RF 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 Goods.
- 14. Intellectual Property**
- 14.1 Where RF has designed, drawn or written Goods for the Customer, then the copyright in those designs and drawings and documents shall remain vested in RF, and shall only be used by the Customer at RF's discretion.
- 14.2 The Customer warrants that all designs or instructions to RF will not cause RF to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify RF against any action taken by a third party against RF in respect of any such infringement.
- 14.3 The Customer agrees that RF may use any documents, designs, drawings or Goods created by RF for the purposes of advertising, marketing, or entry into any competition.
- 15. Default and Consequences of Default**
- 15.1 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 RF's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by RF.
- 15.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify RF from and against all costs and disbursements incurred by RF in pursuing the debt including legal costs on a solicitor and own client basis and RF's collection agency costs.
- 15.4 Without prejudice to any other remedies RF may have, if at any time the Customer is in breach of any obligation (including those relating to payment) RF may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. RF will not be liable to the Customer for any loss or damage the Customer suffers because RF has exercised its rights under this clause.
- 15.5 If any amount 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.
- 15.6 Without prejudice to RF's other remedies at law RF shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to RF shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to RF becomes overdue; or in RF's opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 16. Dispute Resolution**
- 16.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) conducted by a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
- (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
- 17. Insurance**
- 17.1 RF shall have public liability insurance of at least \$5m. It is the Customer's responsibility to ensure that they are similarly insured.
- 18. Compliance with Laws**
- 18.1 The Customer and RF 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.
- 18.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the works.
- 18.3 The Customer 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.
- 19. Cancellation**
- 19.1 RF may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice RF shall repay to the Customer any sums paid in respect of the Price. RF shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by RF (including, but not limited to, any loss of profits) up to the time of cancellation.
- 19.3 Cancellation of orders for Goods made to the Customer's specifications or non-stockist items will definitely not be accepted, once production has commenced.
- 20. Privacy Act 1988**
- 20.1 The Customer and/or the Guarantor/s (herein referred to as the Customer) agree for RF to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by RF.
- 20.2 The Customer agrees that RF may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Customer; and/or
- (b) to notify other credit providers of a default by the Customer; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Customer.
- The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 20.3 The Customer consents to RF being given a consumer credit report to collect overdue payment on commercial credit (Section 18(1)(h) Privacy Act 1988).
- 20.4 The Customer agrees that personal credit information provided may be used and retained by RF for the following purposes (and for other purposes as shall be agreed between the Customer and RF or required by law from time to time):
- (a) the provision of Goods; and/or
- (b) the marketing of Goods by RF, its agents or distributors; and/or
- (c) relation to, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 20.5 RF may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer;
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 20.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
- (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
- (c) advice that RF is a current credit provider to the Customer;
- (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 Customer'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 RF, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
- (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
- (h) that credit provided to the Customer by RF has been paid or otherwise discharged.
- 21. Building and Construction Industry Security of Payments Act 1999**
- 21.1 At RF'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 Payments Act 1999 may apply.
- 21.2 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.
- 22. General**
- 22.1 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.
- 22.2 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.
- 22.3 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.
- 22.4 RF 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 by RF of these terms and conditions.
- 22.5 In the event of any breach of this contract by RF the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 22.6 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 RF nor to withhold payment of any invoice because of any such set-off.
- 22.7 RF may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 22.8 The Customer agrees that RF 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 RF notifies the Customer of such change. Except where RF supplies further Goods to the Customer and the Customer accepts such Goods, the Customer shall be under no obligation to accept such changes.
- 22.9 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.
- 22.10 The failure by RF to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect RF's right to subsequently enforce that provision.