
MIDSTATE POWER PTY LTD TERMS OF TRADE

1. **APPLICATION OF THESE TERMS AND CONDITIONS** In this Agreement, “the Contractor” is Midstate Power Pty Ltd ABN 47 600 936 55 trading as Midstate Power, its successors and assigns or any person acting on behalf of and with the authority of Midstate Power Pty Ltd; “the Customer” is the person or entity requesting goods and services from the Contractor and named as the Customer on the Contractor’s quote, Customer information form, and other Customer paperwork; “Goods” means all goods sold, leased, rented, consigned, bailed or otherwise made available to the Customer by the Contractor including but not limited to electrical equipment and associated components; “Site” means the place where the Contractor’s services will be carried out; and “Services” mean the Contractor’s performance of electrical work and associated services.

2. QUOTES

2.1. Contractor’s Quote

The Contractor shall give the Customer a quote specifying the Goods and Services required in order to fulfill the Customer’s instructions and a cost estimate for such Goods and Services.

2.2. Acceptance by the Customer

Where the Contractor has given the Customer a quote:

2.2.1. the Customer shall accept the quote by signing and returning a true copy of the quote accompanied by a purchase order number, if applicable;

2.2.2. quotes are valid for thirty (30) days only unless an extension has been authorised by the Contractor; and

2.2.3. the Customer warrants that it has not relied on any representation by the Contractor other than as supplied in writing in the quote.

2.3. Contractor May Revise Quote

The Contractor may amend a quote, if not accepted within thirty (30) days from the date of the quote, to take into account any rise or fall in the cost of the Goods and Services as quoted and the Contractor shall notify the Customer of such amendment as soon as practicable thereafter. The Contractor will not be obliged to commence the Services until such time as the Customer agrees to the amendment of the quote.

2.4. Pricing

If there is any error or omission in the Quote, The Contractor reserves the right to change the contract sum on the Quote. This clause applies

even if the Quote has been accepted by the customer. Prices quotes are subject to final costing assessment by the Contractor.

2.5. Force Majeure

The Contractor shall not be liable for any failure or delay in supply or delivery of the products or works where such failure or delay is wholly or partly due to any cause or circumstances whatsoever outside the reasonable control of The Contractor including, but not limited to war, strikes, lockouts, industrial disputes or unrest, government restrictions, pandemics or intervention transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions or accidents of any kind.

2.6. Products & Works If any products and works specified within this quotation are unavailable at the time of works being carried out, the Contractor in its absolute discretion may substitute a reasonable alternative.

3. Delivery of works

- 3.1. Any time specified by the Contractor on delivery of works is an estimate only and the Contractor will not be liable for any loss or damage incurred to the Customer as a result of completion date being late, However the Contractor will make every endeavour to ensure the commencement date & completion date is met.
- 3.2. In the case of worksite shut down due to a natural disaster or lack of essential materials which is beyond the Contractor or Customer an extension time is to be agreed upon in writing by both parties.
- 3.3. The Customer shall ensure the Contractor always has access to the worksite to enable them to undertake works. The Contractor shall not be liable for any loss or damage to the site unless due to the negligence of the Contractor.

4. Defects

The Customer shall inspect the works on completion and shall within seven (7) days (time being of the essence) notify the Contractor of any alleged defect, damage or failure to comply with the description or quote.

5. CANCELLATION

The Customer shall reimburse the Contractor for any costs, losses or expenses incurred by the Contractor should the Customer cancel an accepted quote. The time for payment of such cancellation shall be seven (7) days from the date of the Contractor's tax invoice.

6. WORK IN PROGRESS

The Customer shall provide exclusive Site access for the Contractor to complete any necessary work. Any interruptions due to no Site access or work by other trades or the Customer causing down-time may be billed at the Contractor's hourly rate. Rates are available from the Contractor's office during normal business hours 7am to 3.30pm.

7. UNFORSEEN CIRCUMSTANCES/PRIOR WORK

The Contractor shall NOT be liable for any problems with the Site due to another contractor's prior work or latent conditions which are only revealed when installing the Goods. The Contractor will carry out any work needed to fix any such problem if it is considered necessary for satisfactory installation of the Goods. Any additional work necessary due to these circumstances is a variation and subject to Clause 9. If a price is not agreed, the charge will be the actual cost plus another twenty percent (20%) for the work.

8. SERVICES BELOW THE GROUND

The Customer must clearly mark the exact location and identify all services above and below the ground that the Customer initiated at the Site, including but not limited to drains, pipes, sewers, mains and telephone and data cables, to enable the Contractor to prevent damage to all such services. Should the Customer fail to provide the Contractor with the location of services the Customer has initiated, then the Customer shall indemnify the Contractor from any claim for costs, expenses or losses.

9. 'DO AND CHARGE'

The hourly rate for 'Do and Charge' work may change should the Contractor experience latent conditions or obstacles requiring the hire of special equipment to complete the work. Should the 'Do and Charge' work prove to be more substantial than first envisaged, then the Contractor reserves the right to raise a quote for the work. Before any further work is performed by the Contractor the Customer must accept the quote in a manner as specified in clause 2.2.

10. CONTRACTOR'S TRADING HOURS

The Contractor's normal trading hours are 7am to 3.30pm Monday to Friday. Work performed (at the Customer's request) outside those hours or on a public holiday will be at the Contractor's discretion and will be subject to a surcharge.

11. VARIATIONS

11.1. All requests for variations by the Customer or the Customer's Agent must be made direct to the Contractor's office during normal business hours (7am to 3.30pm). The Contractor will charge the current

office administration fee plus \$150 ex GST irrespective as to the variation being approved or not approved.

- 11.2. The Customer shall indemnify the Contractor from any additional cost incurred by the Contractor should the Customer increase the scope of the Works and/or Goods to be provided. Proof that the Customer can afford the variation may be requested.
- 11.3. If a response to a variation requested by the Contractor has not been received from the Customer within two (2) business days, the Contractor will carry out the Works described as part of its Scope of Works. Such variations may result in additional charges to the original Quote/Contract.
- 11.4. The Customer agrees to indemnify the Contractor from hold up and lost building time and any costs and expenses due to variation work requested or agreed to by the Customer.
- 11.5. The Customer agrees to make no claim against the Contractor for liquidated damages related to delays due to variations that were requested by the Customer.
- 11.6. Payment terms for variations shall be seven (7) days from date of invoice. Variations within a period subject to a progress payment shall be payable at that time and no later.

12. PAYMENT AND DEFAULT

12.1. Time for Payment

Unless otherwise agreed in writing the Contractor's payment terms are strictly seven (7) days from the date of the Contractor's tax invoice.

12.2. Deposit

The Contractor may require a deposit from the Customer and the Customer acknowledges the Contractor is under no obligation to undertake any work as requested by the Customer until the deposit is received by the Contractor in full and when all details pertaining to contract are finalised. In the event of default as to payment owing to the Contractor on the part of the Customer, the Contractor shall be entitled to forfeit the deposit and claim any profit or margin contemplated by or allowed for in the contract in addition to any remedy available to the Contractor at law or in equity.

12.3. Payment Claims

The Contractor shall make any payment claims in accordance with *The Building and Construction Industry Payments Act 2004*. The Customer must respond appropriately and within the time specified in the Act.

12.4. Payment Plan

From time to time the Contractor may offer Customers a payment plan, spreading payment over a specified period with reoccurring payments. A formal Payment Plan Agreement would need to be entered into and such an agreement would include the Contractor's Terms and Conditions of Trade.

12.5. Progress Payments

When agreed progress payments are not honoured by the Customer, the Contractor reserves the right to halt the Services until such time as the outstanding payment is forthcoming. In addition, clauses 10.6, 10.7 and 10.8 may apply.

12.6. Administration Fee

The Contractor reserves the right to charge a monthly fee of twenty-five dollars (\$25) for any accounts not paid within the Contractor's agreed payment terms.

12.7. Interest

The Contractor may charge interest at fifteen percent (15%) per annum calculated on a daily basis on amounts not paid within the Contractor's payment terms.

12.8. Damages

The Customer must pay to the Contractor any costs, expenses or losses incurred by the Contractor as a result of the Customer's failure to pay to the Contractor all sums outstanding as owed by the Customer to the Contractor including without limiting the generality of the forgoing any debt collection and legal costs incurred in enforcing payment on a solicitor and own client basis.

13. RETENTION OF TITLE

13.1. Title

Notwithstanding the delivery of the Goods or their installation, title in any particular Goods shall remain with the Contractor regardless of whether the Goods are on-sold by the Customer until the Customer has paid and discharged any and all monies owing pursuant to any invoice issued by the Contractor for the Goods, including all applicable GST and other taxes, levies and duties. Where the Goods have been on-sold by the Customer, the Customer will be taken to hold the proceeds of sale of such Goods upon trust for the Contractor and to account to the Contractor for these proceeds. Any payment made by or on behalf of the Customer which is later avoided by the application of any Statutory Provisions shall be deemed not to discharge the Contractor's title in the Goods nor the Customer's indebtedness to the Contractor and, in such

an event, the parties are to be restored to the rights which each respectively would have had if the payment had not been made.

13.2. Bailment

The Customer acknowledges that it is in possession of the Goods solely as Bailee until payment of all invoices for the Goods is made pursuant to clause 11.1 and until that time the Customer must not encumber or otherwise charge the Goods and the Customer shall be fully responsible for any loss or damage to the Goods whatsoever and howsoever caused following delivery of the Goods.

13.3. Repossession

The Customer hereby irrevocably grants to the Contractor the right, at its sole discretion, to remove or repossess any Goods from the Customer and sell or dispose of them, and the Contractor shall not be liable to the Customer or any person claiming through the Customer and the Contractor shall be entitled to retain the proceeds of any Goods sold and apply same towards the Customer's indebtedness to the Contractor. If the Customer commits an act of bankruptcy, enters into any form of administration or liquidation, makes any composition or arrangement with its creditors, ceases to carry on business or breaches any fundamental clause of this agreement, then the Contractor may, without prejudice to any other remedies it may have, repossess any Goods delivered to the Customer on any account which has not been paid in accordance with the Terms and Conditions herein and commence proceedings to recover the balance of any monies owing the Contractor by the Customer.

14. PERSONAL PROPERTY SECURITIES ACT (PPSA)

14.1. In this clause, the following words have the respective meanings given to them in the PPSA: Financing Statement, Financing Change Statement, Proceeds, Register, Security Agreement, Security Interest and Verification Statement. In this clause "the Customer" is the grantor and "the Contractor" is the secured party, as defined in the PPSA.

14.2. The Customer acknowledges and agrees:

14.2.1. that these Terms and Conditions constitute a Security Agreement that creates a Security Interest in all Goods (and Proceeds):

14.2.1.1. previously supplied by the Contractor to the Customer;

14.2.1.2. to be supplied in the future by the Contractor to the Customer;

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- 14.2.2. that the Security Interest created by these Terms and Conditions is a continuing Security Interest in all Goods (supplied now or in the future by the Contractor to the Customer) and Proceeds, which will operate (despite any intervening payment or settlement of account) until the Contractor has signed a release; and
- 14.2.3. to waive its rights under section 157 of the PPSA and the following subsections of section 115 of the PPSA, which will not apply to the Security Agreement created by these Terms and Conditions: 95, 118, 121(4), 130, 132(4), 135, 143.
- 14.3. The Customer undertakes to:
- 14.3.1. keep all Goods free of any charge, lien or Security Interest except as created under these Terms and Conditions and not otherwise deal with the Goods in a way that may prejudice any rights of the Contractor under these Terms and Conditions or the PPSA;
- 14.3.2. sign any further documents and provide any further information (which must be complete, accurate and up-to-date in all respects) that designer may require to:
- 14.3.2.1. register a Financing Statement or Financing Change Statement in relation to a Security Interest on the Register;
- 14.3.2.2. register any other document required to be registered by the PPSA; or
- 14.3.2.3. correct a defect in a statement referred to in clause 12.3(b) (i) or 12.3(b) (ii);
- 14.3.3. indemnify, and upon demand reimburse the Contractor for all fees (including actual legal fees on a solicitor/own Customer basis), costs, disbursements and expenses in:
- 14.3.3.1. registering and maintaining a Financing Statement or Financing Change Statement on the Register or releasing any Goods charged thereby; and
- 14.3.3.2. enforcing or attempting to enforce the Security Interest created by these Terms and Conditions.
- 14.3.4. not register, or allow to be registered, a Financing Statement or a Financing Change Statement in respect of the Goods, or Proceeds in favour of a third party, without the prior written consent of the Contractor; and
- 14.3.5. immediately advise the Contractor of any material change in its business details (including, but not limited to, its trading name, address, fax number) or business practices.
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15. SCHEDULE OF WARRANTIES

- 15.1. To the extent required by the Australian Consumer Law (“ACL”), the Contractor warrants that:
- 15.1.1. the Works will be carried out in accordance with all relevant laws and legal requirements in an appropriate and skilful way, in accordance with the plans and specifications (where relevant) using Goods that are good and suitable for the purpose for which they are intended to be used and that, unless otherwise stated in the Contract, those Goods will be new; and
 - 15.1.2. each provisional sum item allowance, if calculated by the Contractor, has been calculated with reasonable skill and care, having regard to all the information reasonably available when the Contract is entered into (including information about the nature and location of the Site).
- 15.2. The Contractor warrants that the Works are, and that Goods supplied are, free of defects at the time of completion and/or installation.
- 15.3. If the Contractor be directed to reuse any materials or components from the Site or elsewhere, then the Contractor will not accept any responsibility for the aesthetic finishes, structural entity or any warranties whatsoever attached to those materials or components. The Customer shall indemnify the Contractor from any costs, losses or expenses associated with the rectification or resupply of such materials or components.
- 15.4. Subject to the ACL, the Contractor does not have to fix any problem caused by misuse, abuse, wear and tear, damage caused by vermin, lizards and insects, or normal shrinkage or movement, minor colour variation in natural products, work done by others or any defects in Goods supplied by the Customer.

16. LIABILITY

16.1. **Non-excludable Rights**

The parties acknowledge that, under the Australian Consumer Law, certain conditions and warranties may be implied in these Terms and Conditions and there are rights and remedies conferred on the Customer in relation to the provision of the Goods and Services which cannot be excluded, restricted or modified by the contract (“Non-excludable Rights”).

16.2. **Disclaimer of Liability**

The Contractor disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Customer, by

statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-excludable Rights. To the extent permitted by law, the liability of the Contractor for a breach of a Non-Excludable Right is limited, at the Contractor's option, to the supplying of the Goods and Services again or payment of the cost of having the Goods and Services supplied again.

16.3. **Indirect Losses**

Notwithstanding any other provision of these Terms and Conditions, the Contractor is in no circumstances (whatever the cause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Customer for:

- 16.3.1. any increased costs or expenses;
- 16.3.2. any loss of profit, revenue, business, contracts or anticipated savings;
- 16.3.3. loss or expense resulting from a claim by a third party; or d) any special, indirect or consequential loss or damage of any nature whatsoever caused by the Contractor's failure to complete or delay in completing the Services within a reasonable time.

16.4. **Force Majeure**

The Contractor will have no liability to the Customer in relation to any loss, damage or expense caused by the Contractor's failure to complete the Services or to deliver the Goods as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, the inability of the Contractor's normal suppliers to supply products or any other matter beyond the Contractor's control.

17. **PRIVACY**

- 17.1. The Customer authorises the Contractor to collect, retain, record, use and disclose commercial and/or consumer information about the Customer, in accordance with the Privacy Act 1988 and the Privacy Principles outlined in the Privacy Amendment Act 2012, to persons and/or legal entities who are a solicitor or any other professional consultant engaged by the Contractor, a debt collector, credit reporting body and/or any other individual or organisation which maintains credit references and/or default listings. This information may be given before, during or after the provision of credit to the Customer.
 - 17.2. Subject to the Privacy Principles outlined in the Privacy Amendment Act 2012, the Customer further authorises the Contractor to collect, retain, record, use and disclose personal information for the marketing of Goods and Services provided by the Contractor.
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18. **ARBITRATION AND MEDIATION**

Any dispute or difference between the Customer and the Contractor may be notified by a party to the other party and the parties shall firstly meet to negotiate, in good faith, resolution of the dispute and secondly, if negotiation fails to achieve a resolution of the dispute within five (5) working days of the notification of the dispute, attend mediation, administered in accordance with procedures as set out by the Institute of Arbitrators and Mediators Australia, provided that this provision shall not prevent the Contractor from instituting legal action at any time to recover monies owing by the Customer to the Contractor.

19. **SECURITY AND CHARGE**

The Customer hereby charges all property, both equitable and legal, present or future of the Customer in respect of any monies that may be owing by the Customer under these Terms and Conditions or otherwise and hereby authorises the Contractor or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by the Customer at any time.

20. **GENERAL MATTERS**

20.1. **Non-Waiver**

Failure by the Contractor to enforce or delay in enforcing any right or provision of these Terms and Conditions will not constitute a waiver of such right or provision unless acknowledged by in writing.

20.2. **Amendments to these Terms and Conditions**

The Contractor reserves the right to vary these Terms and Conditions at any time with notice in writing to the Customer. Any subsequent signed quote or work order will represent the Customer's agreement to these Terms and Conditions as amended.

20.3. **Severability**

Any provision in these Terms and Conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms and Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

20.4. **Governing Law and Jurisdiction**

These Terms and Conditions are governed by the laws of the State of New South Wales and the laws of the Commonwealth of Australia which are in force in New South Wales. All disputes arising between the Customer and the Contractor will be submitted to a court of competent

jurisdiction in New South Wales selected by the Contractor and such court shall possess territorial jurisdiction to hear and determine such proceedings.
