



(A.C.N. 059 424 190) E.C.N. 000 940

15 Guthrie Street, Osborne Park, W.A. 6017  
Telephone : (08) 9242 7444 Facsimile : (08) 9242 7445

## Standard Terms and Conditions

These Terms and Conditions of Sale apply to the sale of goods and services manufactured or supplied by Electserv Nominees Pty Ltd ACN0594 241 90 (trading as NRP Electrical Services). Any order received by the Company is deemed to be an order incorporating these Terms and Conditions and no variation or cancellation of any of these Terms and Conditions shall be binding on the Company unless assented to by a Director of the Company (on behalf of the Company) in writing.

### 1. Interpretation

In these Terms and Conditions:

"Confidential Information" means know how, trade secrets, technical processes, information relating to products, finances, contractual arrangements with customers or suppliers or other information which by its nature, or by the circumstances of its disclosure to the holder of the information, is or could reasonably be expected to be regarded as confidential

"Goods" mean the goods and services purchased by the Buyer from time to time.

"Intellectual Property" means:

- (a) all trademarks, service marks, patents, designs and copyrights, all Confidential Information, customer listings and other industrial and intellectual property exclusively subsisting in, exclusively used in or exclusively relating to the Company's business; and
- (b) any licence or other right to use or to grant the use of any of them or to be the registered owner or user of any of them; wherever subsisting in the world.

"Person" includes any person, firm, corporation, governmental authority or state or federal government.

"PPSA" means the Personal Property Securities Act 2009 (Cth).

"PPSA Information" means any information or documents (including copies of such documents), which are in existence or may be entered into in the future; of the kind mentioned in section 275(1) PPSA.

### 2. Charges

(a) The Buyer:

(i) agrees that the terms of payment are strictly nett 30 days from the last day of the month of invoice and notwithstanding any previous indulgences are then due and payable on demand;

(ii) irrevocably agrees to compensate the Company for any cost, expense or loss to the Company property or any Person caused by the Buyer's use of the Goods;

### 3. Buyer's Warranties and Indemnities

(a) The Buyer warrants that:

- (i) it is solvent and knows of no circumstances which could lead to either the winding up or the bankruptcy of the Buyer, as the case may be, or to the exercise of any other rights, by any person, over or against the Buyer's assets;
- (ii) it will immediately inform the Company if any circumstances as mentioned in clause 3(a)(i) arise.

(b) The Buyer indemnifies the Company from any loss, damage, expense, penalty, fine or liability arising from a breach of these warranties, Buyer's obligations or these Terms and Conditions.

### 4. Intellectual Property

(a) The Buyer acknowledges that the Company has made a substantial investment in the Intellectual Property, which has gone into making the Goods and acknowledges that the Goods may be the subject of copyright, design rights, patents and other rights;

(b) The Buyer irrevocably agrees not to copy, reproduce, reverse engineer or otherwise prejudice the Intellectual Property rights of the Company without first having obtained its written consent;

(c) The Buyer agrees that if the Company develops any product for use by the Buyer, the Intellectual Property associated with the development remains the property of the Company unless the parties otherwise agree in writing;

(d) If the Company produces any products from any plans, drawings or instructions provided by the Buyer, the Buyer warrants that it has good title in such plans, drawings or instructions so as to authorise the Company to produce the products requested and will indemnify the Company against any breach of this warranty.

### 5. Retention of Title

(a) Company to retain title

(i) The Goods supplied by the Company to the Buyer remain the property of the Company until the Buyer has paid all money due to the Company by the Buyer in full.

(ii) Upon taking possession of the Goods, the Buyer must store the Goods:

(A) Separately from other goods of the Buyer, so that the Goods are not mixed with those other goods; and

(B) In such a way that the Goods are recognisable as the property of the Company (including by not removing any identifying marks placed on the Goods by the Company).

(iii) The Buyer is liable for, and indemnifies the Company from and against, all loss or damage (including legal costs) incurred or suffered by the Company however caused in connection with the Company exercising its rights under this clause 5 or attempting to do so.

(b) Personal Property Securities Act

(i) The Buyer acknowledges that this deed creates a security interest under the PPSA in the Goods and any other products to be supplied in the future and consents to the Company effecting a registration on the PPSA register in relation to any security interest contemplated by this deed. The Buyer agrees to pay all costs, expenses and other charges incurred, expended or payable by the Company in relation to the filing of a financing statement or financing change statement in connection with these Terms and Conditions.

(ii) The Buyer must not charge the Goods in any way or grant or otherwise give any interest in the Goods while it remains the property of the Company, nor allow any third party to acquire a security interest in the Goods.

(iii) If the Buyer makes a payment to the Company at any time whether in connection with the supply of goods or otherwise, the Company may apply that payment to first satisfy obligations that are not secured, then obligations that are secured, but not by a purchase money security interest, in the order in which those obligations were incurred, and then obligations that are secured by a purchase money security interest in the order in which those obligations were incurred.

(iv) If the Buyer fails to comply with any obligation under this deed then without limiting the remedies available to the Company:

(A) upon request by the Company, the Buyer must return the Goods and any other products on which there are outstanding amounts owing;

(B) the Buyer authorises the Company and any person authorised by the Company to enter premises where the Goods or other products may be located to take possession of the Goods; and

(C) the Company may retain, sell or otherwise dispose of the Goods or other products.

(v) The Buyer agrees to the extent permitted under the PPSA, the Buyer has no right:

(A) to receive notice of removal of an accession under the PPSA;

(B) under Chapter 4 of the PPSA; or

(C) under the PPSA to receive a copy of any verification statement or financing change statement.

(vi) The Buyer must unconditionally ratify any actions taken by the Company under this clause 5.

(vii) In this clause 5, the following words have the respective meanings given to them in the PPSA: account, proceeds, register, registration, security interest and verification statement.

(c) PPSA confidentiality agreement

(i) Each party agrees to keep the PPSA Information in strict confidence and not disclose that information, except in circumstances required by sections 275(7)(b) or (e) PPSA, provided that where sections 275(7)(b) or (e) require such disclosure, the party that is required to disclose the information gives all available notice to the other party to allow that party to legally challenge the required disclosure and takes all available steps (whether required by the other party or not) to maintain such PPSA Information in confidence.

(ii) Each party agrees not to authorise the disclosure of any PPSA Information to any third party pursuant to section 275(7)(c) PPSA or request information under section 275(7)(d) PPSA unless the other party to this deed explicitly agrees.

## 6. Product Warranty, Exclusions and Limitations

(a) Subject to clause 6(b), the Company will, in its sole discretion, repair or replace free of charge any Goods which are found (to the reasonable satisfaction of the Company) to be defective as a result of faulty design, manufacture or workmanship, subject to the following limitations :

(i) the Goods must be returned carriage paid to the Company (or to an authorised distributor of the Company's products) within twelve (12) months from the date of sale;

(ii) the Goods must not have been used for any purpose other than that for which they were designed;

(iii) the Buyer will be solely responsible for, and acknowledges that the Company will not be responsible for, the provision and / or costs of labour to remove or re-instate such Goods; and

(iv) the warranty contemplated in this clause 6(a) extends to the repair or replacement of the faulty Goods only and the Company shall not under any circumstances be liable for any consequential or contingent loss or damage in connection with such Goods.

(b) Nothing in this clause 6 will exclude, restrict or modify any condition, warranty, right or liability implied in these Terms and Conditions or protected by law where to do so would render void this clause 6.

(c) Without limiting clause 6(a), if the Company breaches an implied condition or warranty referred to in Part 5 Division 2 of the Trade Practices Act 1974, the liability of the Company is limited to one of the following options, to be selected by the Company:

(i) the replacement of the Goods or the supply of equivalent goods;

(ii) the repair of the Goods;

(iii) the payment of the costs of replacing the Goods or of acquiring equivalent goods; or

(iv) the payment of the costs of having the Goods repaired;

(d) Subject to clauses 6(a), 6(b) and 6(c), the Company, to the maximum extent permissible by law :

(i) excludes from these Terms and Conditions, all conditions, warranties and terms implied by statute, general law or custom;

(ii) excludes all liability to any Person, including the Buyer, for acts or omissions of the Company in tort (including negligence), contract, bailment or otherwise for loss of, damage to or deterioration of the Goods, or for breach of these Terms and Conditions;

(iii) excludes all liability for, and the Buyer releases and indemnifies the Company against, all loss, damage, cost and expense from any claim by any Person in tort (including negligence), contract, bailment or otherwise for loss or damage to any property or injury to, or death of, any Person, arising out of any acts or omissions of the Company or any or all of the Goods, or for breach of these Terms and Conditions.

(e) The exclusions, releases and indemnities in clause 6(d) extend to loss of profits, business or anticipated savings or any other direct, indirect or consequential damage, and to economic loss, even if the Company knows they are possible or otherwise foreseeable.

(f) These Terms and Conditions apply in all circumstances arising from a fundamental breach of contract or breach of a fundamental term.

(g) In entering into these Terms and Conditions, the Company, in addition to acting for itself, also acts as agent of and trustee for each of its servants, agents and subcontractors so they are entitled to the full benefit of these Terms and Conditions, including any exclusions or limitations of liability to the same extent as the Company.

(h) Even if the Company breaches any of these Terms and Conditions, all the rights, immunities and limitations of liability in these Terms and Conditions continue to have their full force and effect in all circumstances.

## 7. Miscellaneous

(a) These Terms and Conditions are governed and must be construed under the laws of the State of Western Australia and the parties submit to the exclusive jurisdiction of the courts of that State.

(b) If any provision (or part thereof) of these Terms and Conditions shall be or be determined to be illegal, invalid, void or voidable, that provision (or part thereof) shall be severable and the legality or validity of the remainder of these Terms and Conditions shall not be affected and shall continue in full force and effect.

(c) The Company is not bound by any waiver, discharge or release of a condition or any agreement which varies these Terms and Conditions unless it is in writing and signed by a Director of the Company.

(d) If the Company waives a breach of a condition, the waiver does not operate as a waiver of another breach of the same or any other condition or as a continuing waiver.

(e) These Terms and Conditions are to be read in conjunction with the terms and conditions applicable to any credit application made by the Buyer to the Company.

(f) These Terms and Conditions constitute the whole of the agreement between the parties and supersedes all prior arrangements between the parties either written, oral or established through a course of dealings, and override any conditions to the contrary which may be expressed in any of the Buyer's order forms or other documents with the exception of clause 7(e) above.