

## Switch Electrical & Data Installations Pty Ltd – Terms & Conditions of Trade

Please find below our standard terms and conditions. The table below outlines additional conditions to the Standard Terms of Trade, depending on Client type (Special Conditions).

The agreement between the parties comprises:

1. The Quote;
2. The Special Conditions; and
3. The Standard Terms of Trade

The Special Conditions will prevail to the extent of any inconsistency with the Quote and/or the Standard Terms of Trade.

### PART 1: SPECIAL CONDITIONS

#### 1. Direct Residential Client:

##### 1.1. Work Health & Safety

The Client is aware that whilst works are being carried out it is considered a work site and therefore must comply with all legislation and must follow the following conditions.

- 1.1.1. An approximate age of the premises must be advised to ascertain potential risk.
- 1.1.2. Disclosure of the presence of asbestos, where known by the Client, within the work site must be made prior to the commencement of works.
- 1.1.3. All work areas must be free of potential hazard to any representative of Switch Electrical.
- 1.1.4. Any representative of Switch Electrical can refuse to complete engaged works if they believe that the working environment is in breach of company policy and / or legislation.

##### 1.2. Price and Payment

- 1.2.1. Where a quoted price has been given by a Switch Electrical team member and this quote has been approved by the Client, an invoice may be provided at the completion of works which will be required to be paid by the Client at the delivery time of the invoice.
- 1.2.2. Switch Team members will not carry cash with them and therefore will be unable to provide change and all cash payments will need to be made to the invoiced amount.

#### 2. Direct Commercial Client:

##### 2.1. Price and Payment

- 2.1.1. Where a quoted price has been given by a Switch Electrical team member and this quote has been approved by the Client, an invoice may be provided at the completion of works which will be required to be paid by the Client at the delivery time of the invoice.
- 2.1.2. Switch Team members will not carry cash with them and therefore will be unable to provide change and all cash payments will need to be made to the invoiced amount.
- 2.1.3. If the Client wishes to create a credit account, they must do so by application in writing. Once an account application form is completed it will be reviewed according to the standard Terms of Trade.

#### 3. Real Estate Client:

A Real Estate Client is one that manages a property on behalf of a landlord.

##### 3.1. Price and Payment

- 3.1.1. The Client is to ensure that they advise Switch Electrical of the maximum work order limit and are responsible for advising if any changes are made to this as soon as possible. Switch Electrical cannot be held responsible for Goods invoiced beyond an undisclosed maximum work order limit and is aware that Goods up to a disclosed amount are deemed to be accepted unconditionally but anything beyond this amount requires approval from the landlord.
- 3.1.2. The Client is to ensure that they advise Switch Electrical of their standard payment terms and are responsible for advising if any changes are made to this as soon as possible.
- 3.1.3. Switch Electrical agrees to provide all invoices in the property owners name care of the property management agency.
- 3.1.4. Where request for services is made directly by a property managing agency, this agency is responsible for the payment of the invoice which is to be paid by this agency according to the terms specified within their account application and agrees that it is not the responsibility of Switch Electrical to recover payment from the property owner.

##### 3.2. Access

The Client shall ensure they give notice of the current tenant and occupancy status of a property at time of work requested.

##### 3.3. Approval of Works

- 3.3.1. The Client will provide a work order for works to be carried out including a unique work order number.
- 3.3.2. When a call out is requested by a tenant, and deemed as necessary by a qualified technician, Switch Electrical will mark the task as "Worker Order Pending" and advise the Client of the works carried out. The Client will then provide a work order on the next business day to Switch Electrical for application to

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the invoice.

### 4. Sub Contract Client:

A sub contract Client is deemed as any Client that engages Switch Electrical on behalf of a third party to carry out electrical works but is not deemed as responsible for management of tenancy of the premises.

#### 4.1. Price and Payment

4.1.1. The Client is to ensure that they advise Switch Electrical of the maximum work order limit. Switch Electrical cannot be held responsible for goods invoiced beyond an undisclosed maximum work order limit and is aware that works up to a disclosed amount are deemed to be accepted unconditionally but anything beyond this amount requires approval from the Client.

#### 4.1.2. Service Fees:

Normal hours are Monday to Friday from 8.00am until 5.00pm. Outside of these hours are considered after hours. Should a request for services be made after hours the following service fees will be incurred:

- a. Monday to Saturday (normal after hours) will incur a call out fee of \$150 + GST plus the hourly labour rate and parts.
- b. Sundays and public holidays (extraordinary after hours) will incur a call out fee of \$200 + GST plus the hourly labour rate and parts.

#### 4.2. Approval of Works

4.2.1. The Client will provide a work order for works to be carried out including a unique work order number.

## PART 2: STANDARD TERMS OF TRADE

### 1. Definitions

- 1.1. **"Switch Electrical"** means Switch Electrical & Data Installations Pty Ltd ABN 95 126 195 373, its successors and assigns or any person acting on behalf of and with the authority of Switch Electrical & Data Installations Pty Ltd.
- 1.2. **"Client"** means the person detailed in the Quote and/or the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3. **"Deposit"** means the deposit (if any) set out in the Quote
- 1.4. **"Goods"** means all goods or services supplied by Switch Electrical to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5. **"Price"** means the Price payable for the Goods as agreed between Switch Electrical and the Client in accordance with clause 4 below and set out in the Quote.
- 1.6. **"Quote"** means the Quote to which these terms and conditions are attached.
- 1.7. **"Services"** are set out in the Quote.
- 1.8. Service Fee's are set out in Clause 5 and may be varied by Switch Electrical from time to time.
- 1.9. **"Special Conditions"** means the special conditions set out in Part A of these terms and conditions (where relevant to the Client).
- 1.10. **"works"** means the Services

### 2. Acceptance

- 2.1. The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client:
  - 2.1.1. places an order for or accepts delivery of the Goods;
  - 2.1.2. signs and returns the Quote;
  - 2.1.3. confirms by email that they accept the Quote;
  - 2.1.4. accepts the Quote online;
  - 2.1.5. instructs us to proceed with the Goods; or
  - 2.1.6. makes part or full payment for the Goods.
- 2.2. These terms and conditions may only be amended with Switch Electrical's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Switch Electrical.

### 3. Changes in Client Details

- 3.1. The Client shall give Switch Electrical not less than fourteen (14) days prior written notice of any proposed change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by Switch Electrical as a result of the Client's failure to comply with this clause.
- 3.2. The Client must not assign or deal with the whole or any part of its rights or obligations under these terms and conditions without the prior written consent of Switch Electrical (such consent not to be unreasonably withheld).

### 4. Price and Payment

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- 4.1. The Client agrees to:
  - 4.1.1. pay us the Price, including any Deposit required.
  - 4.1.2. pay invoices by the payment date set out on the Invoice. If the Client does not pay by the payment date, Switch Electrical may cease to provide the Services to the Client until Switch Electrical receive payment and/or apply the remedies in Clause 17 - Default and Consequences of Default.
- 4.2. At Switch Electrical's sole discretion the Price shall be either:
  - 4.2.1. as indicated on any invoice provided by Switch Electrical to the Client; or
  - 4.2.2. Switch Electrical's quoted price (subject to clause 4.3) which will be valid for the period stated in the quotation or otherwise for a period of sixty (60) days.
- 4.3. Switch Electrical reserves the right to change the Price if a variation to the Quote is requested. Any variation from the plan of scheduled Goods or specifications (including, but not limited to, any variation as a result of additional Goods required, due to unforeseen circumstances such as limitations to accessing the site and/or prerequisite work by any third party not being completed) will be charged for on the basis of the Quote and will be shown as variations and invoiced separately.
- 4.4. If the Client requests a variation, Switch Electrical have discretion as to whether Switch Electrical make the variation.
- 4.5. At Switch Electrical's sole discretion a deposit of up to twenty percent (20%) of the Price may be required.
- 4.6. Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Switch Electrical, which may be (timing will be specified and agreed upon before order is placed):
  - 4.6.1. on delivery of the Goods;
  - 4.6.2. at time of Goods being ordered;
  - 4.6.3. by way of instalments/progress payments in accordance with Switch Electrical's payment schedule;
  - 4.6.4. by way of 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; or
  - 4.6.5. the date specified on any invoice or other form as being the date for payment,
- 4.7. Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card, or by any other method as agreed to between the Client and Switch Electrical.
- 4.8. Unless otherwise stated, the total price listed on invoices will include GST with the total GST being charged itemised accordingly.

### 5. Service Fees:

- 5.1. Normal hours are Monday to Friday from 8.00am until 5.00pm. Outside of these hours are considered after hours. Should a request for services be made after hours the following Service Fees will be incurred:
  - 5.1.1. Monday to Saturday (normal after hours) will incur a call out fee of \$150 + GST plus the hourly labour rate and parts.
  - 5.1.2. Sundays and public holidays (extraordinary after hours) will incur a call out fee of \$200 + GST plus the hourly labour rate and parts.
  - 5.1.3. When after hours call outs are requested directly by the tenant, Switch Electrical will endeavour to ascertain whether the work required to be carried out falls within the Residential Tenancy Act's 2010 guidelines defining what an urgent repair.
  - 5.1.4. Client will be advised that if they request work to be carried out such work could be deemed as not urgent by the managing agent and service fees will be charged onto them personally and the landlord will not be deemed liable. Urgent work may include, but is not limited to:
    - 5.1.4.1. A dangerous electrical fault;
    - 5.1.4.2. A failure or breakdown of the gas, electricity or water supply to the premises;
    - 5.1.4.3. A failure or breakdown of any essential service on the residential premises for hot water, cooking, heating, cooling or laundering; or
    - 5.1.4.4. Any fault or damage that causes the premises to be unsafe or insecure

### 6. Delivery

- 6.1. The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Switch Electrical claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Switch Electrical's control, including but not limited to any failure by the Client to:
  - 6.1.1. make a selection; or
  - 6.1.2. have the site ready for the Services; or
  - 6.1.3. notify Switch Electrical that the site is ready.

### 7. General Risk

- 7.1. If Switch Electrical retains ownership of the Goods under clause 12 then:
  - 7.1.1. where Switch Electrical is supplying Goods only, all risk for the Goods shall immediately pass to the Client on delivery and the Client must insure the Goods on or before delivery. Delivery of the Goods shall be deemed to have taken place immediately at the time that the Goods are delivered by Switch Electrical or Switch Electrical's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).

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7.1.2. where Switch Electrical is to both supply and install Goods then these Goods shall fall under the insurance of Switch Electrical until the installation is complete. Upon completion of the installation all risk for the Goods and Services shall immediately pass to the Client.

### 8. Electrical Risk

- 8.1. All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with the Australian and New Zealand Wiring standards.
- 8.2. The Client warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Goods once installed. If, for any reason (including the discovery of asbestos, defective or unsafe wiring, or dangerous access to roofing), Switch Electrical reasonably forms the opinion that the Client's premises is not safe for the installation of Goods to proceed then Switch Electrical shall be entitled to delay installation of the Goods **(in accordance with the provisions of clause 6.1 above)** until Switch Electrical is satisfied that it is safe for the installation to proceed.
- 8.3. If Switch Electrical are not satisfied that it is safe for the installation to proceed they can terminate this agreement without penalty.
- 8.4. Where the Client has supplied materials for Switch Electrical to complete the Services, the Client acknowledges that he accepts full responsibility for the suitability of purpose, quality and any faults inherent in the materials. Switch Electrical shall not be responsible for any defects in the materials, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of materials supplied by the Client.
- 8.5. The Client acknowledges that Switch Electrical is only responsible for parts that are replaced by Switch Electrical, and in the event that other parts/Goods, subsequently fail, the Client agrees to indemnify Switch Electrical against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 8.6. The Client acknowledges that Switch Electrical shall not be responsible for anything at the Client's property other than its own Goods (including but not limited to any asbestos, defective or unsafe wiring, or roofing). The Client agrees to indemnify Switch Electrical against any loss or damage whatsoever arising out of matters for which Switch Electrical are not liable.

### 9. Data Risk

- 9.1. The Client acknowledges and agrees that:
  - 9.1.1. Switch Electrical does not guarantee the performance or transmission speed or quality of any data; and
  - 9.1.2. transmission of data may be unavailable from time to time due to scheduled maintenance and/or upgrades to websites, servers or netGoods by third parties; and
  - 9.1.3. there are inherent hazards in electronic distribution and as such Switch Electrical cannot warrant against delays or errors in transmitting data between the Client and any person or entity the Client conducts communications with including orders, and you agree that Switch Electrical will not be liable for any losses which the Client suffers as a result of delays or errors in transmitting orders or other communications and/or documents.

### 10. Access

- 10.1. The Client shall ensure that Switch Electrical has clear and free access to the work site at all times to enable them to undertake the Goods. Switch Electrical 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 Switch Electrical.
- 10.2. The Client will ensure that at all times the property is safe and that all facilities provided by the Client for the purposes of enabling the Goods to be performed are also safe.
- 10.3. The Client accepts that Switch Electrical have the right to impose stand down charges and recover additional costs incurred where work is delayed by reason not in Switch Electrical's control and where Switch Electrical are unable to reasonably reschedule services;
- 10.4. Should access require parking fees, these fees will be invoiced to you accordingly.

### 11. Underground Locations

- 11.1. Prior to Switch Electrical commencing any work the Client must advise Switch Electrical of the precise location of all underground services on the site and clearly mark the same. The underground mains & 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, and any other services that may be on site.
- 11.2. Whilst Switch Electrical will take all care to avoid damage to any underground services the Client agrees to indemnify Switch Electrical 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 11.1.

### 12. Title

- 12.1. Switch Electrical and the Client agree that ownership of the Goods shall not pass until:
  - 12.1.1. the Client has paid Switch Electrical all amounts owing to Switch Electrical; and

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- 12.1.2. the Client has met all of its other obligations to Switch Electrical.
- 12.2. Receipt by Switch Electrical 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.
- 12.3. It is further agreed that:
  - 12.3.1. until ownership of the Goods passes to the Client in accordance with clause 12.1 that the Client is only a bailee of the Goods and must return the Goods to Switch Electrical on request.
  - 12.3.2. the Client holds the benefit of the Client's insurance of the Goods on trust for Switch Electrical and must pay to Switch Electrical the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - 12.3.3. the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Switch Electrical and must pay or deliver the proceeds to Switch Electrical on demand.
  - 12.3.4. the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Switch Electrical and must sell, dispose of or return the resulting product to Switch Electrical as it so directs.
  - 12.3.5. the Client irrevocably authorises Switch Electrical to enter any premises where Switch Electrical believes the Goods are kept and recover possession of the Goods.
  - 12.3.6. Switch Electrical may recover possession of any Goods in transit whether or not delivery has occurred.
  - 12.3.7. the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Switch Electrical.
  - 12.3.8. Switch Electrical may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

### 13. Personal Property Securities Act 2009 ("PPSA")

- 13.1. In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 13.2. Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by Switch Electrical to the Client.
- 13.3. The Client undertakes to:
  - 13.3.1. 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 Switch Electrical may reasonably require to;
    - 13.3.1.1. register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - 13.3.1.2. register any other document required to be registered by the PPSA; or
    - 13.3.1.3. correct a defect in a statement referred to in clause 13.313.3.113.3.1.1 or 13.313.3.113.3.1.2;
  - 13.3.2. indemnify, and upon demand reimburse, Switch Electrical 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;
  - 13.3.3. not register a financing change statement in respect of a security interest without the prior written consent of Switch Electrical;
  - 13.3.4. 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 Switch Electrical;
  - 13.3.5. immediately advise Switch Electrical 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.
- 13.4. Switch Electrical 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.
- 13.5. The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6. The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 13.7. Unless otherwise agreed to in writing by Switch Electrical, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8. The Client must unconditionally ratify any actions taken by Switch Electrical under clauses 13.3 to 13.5.
- 13.9. Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 14. Security and Charge

- 14.1. In consideration of Switch Electrical agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

- 14.2. The Client indemnifies Switch Electrical from and against all Switch Electrical's costs and disbursements including legal costs on a solicitor and own Client basis incurred in exercising Switch Electrical's rights under this clause.
- 14.3. The Client irrevocably appoints Switch Electrical and each director of Switch Electrical as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.

**15. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**

- 15.1. The Client must inspect the Goods on delivery and must within thirty (30) days of delivery notify Switch Electrical in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Switch Electrical to inspect the Goods.
- 15.2. Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
- 15.3. Switch Electrical acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4. Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Switch Electrical makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Switch Electrical's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5. If the Client is a consumer within the meaning of the CCA, Switch Electrical's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6. If Switch Electrical is required to replace the Goods under this clause or the CCA, but is unable to do so, Switch Electrical may refund any money the Client has paid for the Goods.
- 15.7. If the Client is not a consumer within the meaning of the CCA, Switch Electrical's liability for any defect or damage in the Goods is:
- 15.7.1. limited to the value of any express warranty or warranty card provided to the Client by Switch Electrical at Switch Electrical's sole discretion;
  - 15.7.2. limited to any warranty to which Switch Electrical is entitled, if Switch Electrical did not manufacture the Goods;
  - 15.7.3. otherwise negated absolutely.
- 15.8. Subject to this clause 15, returns will only be accepted provided that:
- 15.8.1. the Client has complied with the provisions of clause 15.1; and
  - 15.8.2. Switch Electrical has agreed that the Goods are defective; and
  - 15.8.3. the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
  - 15.8.4. the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 15.9. Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, Switch Electrical shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- 15.9.1. the Client failing to properly maintain or store any Goods;
  - 15.9.2. the Client using the Goods for any purpose other than that for which they were designed;
  - 15.9.3. the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - 15.9.4. the Client failing to follow any instructions or guidelines provided by Switch Electrical;
  - 15.9.5. fair wear and tear, any accident, or act of God.
- 15.10. Notwithstanding anything contained in this clause if Switch Electrical is required by a law to accept a return then Switch Electrical will only accept a return on the conditions imposed by that law.

**16. Intellectual Property**

- 16.1. Where Switch Electrical has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Switch Electrical.
- 16.2. The Client warrants that all designs, specifications or instructions given to Switch Electrical will not cause Switch Electrical to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Switch Electrical against any action taken by a third party against Switch Electrical in respect of any such infringement.
- 16.3. The Client agrees that Switch Electrical may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Switch Electrical has created for the Client.

**17. Default and Consequences of Default**

- 17.1. 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 Switch Electrical's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2. If the Client owes Switch Electrical any money the Client shall indemnify Switch Electrical from and against all costs and disbursements incurred by Switch Electrical in recovering the debt (including but not limited

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to internal administration fees, legal costs on a solicitor and own Client basis, Switch Electrical's contract default fee, and bank dishonour fees).

- 17.3. Without prejudice to any other remedies Switch Electrical may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Switch Electrical may suspend or terminate the supply of Goods to the Client. Switch Electrical will not be liable to the Client for any loss or damage the Client suffers because Switch Electrical has exercised its rights under this clause.
- 17.4. Without prejudice to Switch Electrical's other remedies at law Switch Electrical shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Switch Electrical shall, whether or not due for payment, become immediately payable if:
- 17.4.1. any money payable to Switch Electrical becomes overdue, or in Switch Electrical's opinion the Client will be unable to make a payment when it falls due;
- 17.4.2. the Client 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
- 17.4.3. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

### 18. Cancellation

- 18.1. Switch Electrical 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 Client. On giving such notice Switch Electrical shall repay to the Client any money paid by the Client for the Goods. Switch Electrical shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.2. In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Switch Electrical as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18.3. Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

### 19. Privacy Act 1988

- 19.1. The Client agrees for Switch Electrical to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by Switch Electrical.
- 19.2. The Client agrees that Switch Electrical may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- 19.2.1. to assess an application by the Client; and/or
- 19.2.2. to notify other credit providers of a default by the Client; and/or
- 19.2.3. 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
- 19.2.4. to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 19.3. The Client consents to Switch Electrical being given a consumer credit report to collect overdue payment on commercial credit.
- 19.4. The Client agrees that personal credit information provided may be used and retained by Switch Electrical for the following purposes (and for other agreed purposes or required by):
- 19.4.1. the provision of Goods; and/or
- 19.4.2. analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
- 19.4.3. processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- 19.4.4. enabling the collection of amounts outstanding in relation to the Goods.
- 19.5. Switch Electrical may give information about the Client to a CRB for the following purposes:
- 19.5.1. to obtain a consumer credit report;
- 19.5.2. allow the CRB to create or maintain a credit information file about the Client including credit history.
- 19.6. The information given to the CRB may include:
- 19.6.1. personal information as outlined in 19.1 above;
- 19.6.2. name of the credit provider and that Switch Electrical is a current credit provider to the Client;
- 19.6.3. whether the credit provider is a licensee;
- 19.6.4. type of consumer credit;
- 19.6.5. details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- 19.6.6. advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and Switch Electrical has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
- 19.6.7. information that, in the opinion of Switch Electrical, the Client has committed a serious credit infringement;

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19.6.8. advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

19.7. The Client shall have the right to request (by e-mail) from Switch Electrical:

19.7.1. a copy of the information about the Client retained by Switch Electrical and the right to request that Switch Electrical correct any incorrect information; and

19.7.2. that Switch Electrical does not disclose any personal information about the Client for the purpose of direct marketing.

19.8. Switch Electrical will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.

19.9. The Client can make a privacy complaint by contacting Switch Electrical via e-mail. Switch Electrical will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

### 20. Dispute Resolution

20.1. Client feedback is important to us. Switch Electrical seek to resolve Client concerns quickly and effectively. If the Client has any feedback or questions about the Services, please contact Switch Electrical via e-mail.

20.2. If a dispute arises between the parties to this agreement 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 mediation.

20.3. If the parties cannot agree how to resolve the dispute at that initial meeting, any party may refer the matter to a mediator. If the parties cannot agree on who the mediator should be, the complainant will ask the Law Society of New South Wales to appoint a mediator. The mediator will decide the time and place for mediation. The parties must attend the mediation in good faith, to seek to resolve the dispute.

20.4. Any attempts made by the parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the parties under these terms and conditions, by law or in equity.

### 21. Compliance with Laws

21.1. The Client and Switch Electrical shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods.

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

21.3. The Client agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

### 22. Building and Construction Industry Security of Payments Act 1999

22.1. At Switch Electrical's sole discretion, if there are any disputes or claims for unpaid Goods then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.

22.2. Nothing in this agreement is intended to have the affect 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.

### 23. Client Warranties

Client warrants that:

23.1. there are no legal restrictions preventing the Client from agreeing to these terms and conditions;

23.2. the Client will cooperate with Switch Electrical, and provide information that is reasonably necessary to enable Switch Electrical to provide the Goods as requested from time to time, in a timely manner;

23.3. the information the Client provided is true, correct and complete;

23.4. the Client will inform Switch Electrical if the Client have reasonable concerns relating to Switch Electrical's provision of Goods under these terms and conditions, with the aim that the parties will use all reasonable efforts to resolve your concerns;

23.5. the Client is responsible for obtaining any consents, licences and permissions from other parties necessary for the Goods to be provided, at the Client's cost, and for providing Switch Electrical with the necessary consents, licences and permissions;

23.6. the Client will ensure that, if the Goods are to be performed on its property, the Client is authorised to occupy those premises and obtain the Goods;

23.7. the Client will ensure that if the Services are to be performed on its property, that at all times the property is safe and that all facilities provided by the Client for the purposes of enabling the Goods to be performed are also safe;

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- 23.8. the Client will ensure that Switch Electrical have free and unimpeded access to the place in which the Goods are to take place and that the Client will do all things to ensure that Switch Electrical are not delayed by matters within its control;
- 23.9. the Client will not employ, canvass, solicit, entice, induce or attempt to employ Switch Electrical's employees or contractors.

### 24. General

- 24.1. The failure by Switch Electrical to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Switch Electrical's right to subsequently enforce that provision. 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.
- 24.2. These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales in which Switch Electrical has its principal place of business, and are subject to the jurisdiction of the courts of Dubbo in New South Wales. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Dubbo in New South Wales.
- 24.3. Subject to clause 15, Switch Electrical shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit, costs of business interruption, loss of opportunities, or any like claim) suffered by the Client arising out of a breach by Switch Electrical of these terms and conditions (alternatively Switch Electrical's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 24.4. The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Switch Electrical nor to withhold payment of any invoice because part of that invoice is in dispute.
- 24.5. Switch Electrical may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 24.6. The Client agrees that Switch Electrical may amend these terms and conditions at any time. If Switch Electrical makes a change to these terms and conditions, then that change will take effect from the date on which Switch Electrical notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Switch Electrical to provide Goods to the Client.
- 24.7. 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.
- 24.8. If any provision (or part of it) under these terms and conditions is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under these terms and conditions cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these terms and conditions and the remaining provisions (and remaining part of the provision) of these terms and conditions are valid and enforceable.
- 24.9. The Clients consent to Switch Electrical stating that Switch Electrical provided Goods to you, including but not limited to mentioning the Client on Switch Electrical's website and in Switch Electrical's promotional material.
- 24.10. Any notice required or permitted to be given by either party to the other under these terms and conditions will be in writing addressed to the relevant address in the Quote. Any notice may be sent by standard post or email, and notices will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 24.11. These terms and conditions and any document expressly referred to in them represent the entire agreement between the parties and supersede any prior agreement, understanding or arrangement between the parties, whether oral or in writing.
- 24.12. The Special Conditions will prevail to the extent of any inconsistency with these terms and conditions.