

TWIGG ELECTRIC PTY LTD

ABN: 36 690 314 722

Registered Office: 186 Grange Road, Fairfield, VIC, 3078, Australia

## **TERMS AND CONDITIONS**

These are the Terms and Conditions of Quotation and Sale ("Terms and Conditions") of all products and services supplied by "Twigg Electric Pty Ltd", except as otherwise expressly agreed upon in writing between a duly authorised officer of Twigg Electric Pty Ltd and the client, the following Terms and Conditions shall apply notwithstanding any provisions to the contrary which may appear on any document or agreement between the Client and Twigg Electric Pty Ltd.

### **1. Definitions**

- 1.1. "Client" means the person/s, company or business placing the order for Works and/or materials supplied by Twigg Electric Pty Ltd to the Client as specified in any quote, invoice, document or order. The client warrants that they have the power to enter into this agreement and has obtained all necessary authorisation to allow them to do so.
- 1.2. "Twigg Electric Pty Ltd" means the company that the Client is contracting with whose business name and ABN appears on the quotation, invoice, receipt or other document provided to the Client.
- 1.3. "Quote" means any document containing a price for Works, including but not limited to Tax Invoices, quotations generated by computer or tablet devices or handwritten quotations.
- 1.4. "Works" means any services rendered, products or materials delivered or any future or completed work done by Twigg Electric Pty Ltd.
- 1.5. "Equifax" means Equifax Pty Ltd, a credit reporting agency.

### **2. Binding Nature**

- 2.1. All orders placed with Twigg Electric Pty Ltd shall only be accepted subject to these Terms and Conditions. The Client has exclusively accepted and is immediately bound by these Terms and Conditions if the Client places an order for the product/s or services, signs any Quote, pays the deposit, continues to provide instructions and/or accepts the product/s or Works.
- 2.2. Twigg Electric Pty Ltd may, at any time, alter these Terms and Conditions and such altered Terms and Conditions shall apply after notification by Twigg Electric Pty Ltd to the Client.

### **3. Pricing**

- 3.1. Twigg Electric Pty Ltd has a default \$250+GST call out and \$125+GST per hour charge out. This is applied to all jobs unless agreed upon prior in the way of Site Visit Request, Quote or formal agreement.
- 3.2. If there is any error or omission in the Quote, Twigg Electric Pty Ltd reserves the right to change the contract sum on the Quote. This clause applies even if the Quote has been accepted by the client. Prices quoted do not include waste removal and are subject to final costing assessment by Twigg Electric Pty Ltd unless otherwise agreed in writing.
- 3.3. Upon acceptance of the Quote by the Client, Twigg Electric Pty Ltd may require a deposit to be paid prior to any works being commenced by Twigg Electric Pty Ltd. This deposit is at the sole discretion of Twigg Electric Pty Ltd.
- 3.4. Notwithstanding any other clause, the contract sum on the Quote will only be valid for 30 days from the date of the quotation. Twigg Electric Pty Ltd reserves the right to make any changes to the Quote if the 30 days lapses.
- 3.5. At Twigg Electric Pty Ltd sole discretion a portion of or the full amount of the deposit may be non-refundable. The amount that is non-refundable is a true estimate of costs and expenses spent to date.

3.6. Twigg Electric Pty Ltd reserves the right to make any changes to the quotation including but not limited to the contract sum if either:

- (i) a variation is requested by the Client, or
- (ii) a Quote has not been fulfilled within 30 days of the date the Quote was produced.

Any variation from the quotation, schedule works or specifications will allow Twigg Electric Pty Ltd the right to stop the progress of any works until Twigg Electric Pty Ltd and the Client agree to changes.

3.7. Variations will be charged at an hourly rate of \$125+GST by default, unless a price is agreed upon prior.

#### **4. Terms of Payment**

4.1. The client is required to make payment within 7 days of the date of any invoice.

4.2. Should the client wish to pay an invoice by way of credit card, a merchant fee will be charged for the use of MasterCard or Visa.

4.3. Each invoice furnished to applicable clients will amount to a payment claim made under the Building and Construction Industry Security of Payment Act 2002 Victoria. Supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions or accidents of any kind.

4.4. (i) (ii)

If the client fails to make payment in accordance with clause 4.1, Twigg Electric Pty Ltd shall be entitled to:

- Require the payment of cash upon delivery and commencement of any further Works
- Charge default interest at the rate of 10% per annum compounding monthly on all overdue amounts (including late payment charges and amounts other than the contract sum) calculated on a day to day basis on any monies due but unpaid, such interest to be computed from the due date for payment AND the parties agree that such default is not a penalty but is a true measure of damages incurred by Twigg Electric Pty Ltd.
- Payments received from the Client will be credited first against any default interest and all such charges shall be payable upon demand;
- (iii) Any amount not paid in accordance with the terms and conditions in the Agreement, will be subject to penalty interest pursuant to the provisions of the Penalty Interest Rates Act 1983 and Supreme Court Act 1986 or any act with supersedes either of those Acts until the total amount is paid in full.
- (iv) Claim from the Client all costs relating to any action taken by Twigg Electric Pty Ltd to recover moneys or goods due from the Client including, but not limited to, any legal costs and disbursements on a solicitor-client basis;
- (v) Cease any further Works for the Client and terminate any agreement in relation to services and/or products that have not been provided or delivered; and

4.5. The Client shall not be entitled to set off against, or deduct from the contract sum, any sums owed or claimed to be owed to the Client by Twigg Electric Pty Ltd nor to withhold payment of any invoice because part of that invoice is in dispute.

#### **5. Default**

5.1. Should the client commit an act of default by failing to pay an invoice, Twigg Electric Pty Ltd will send a notice advising that a default will be listed against the client with Equifax. Should the default not be remedied within sixty (60) days of the money being due, Twigg Electric Pty Ltd will register a default listing with Equifax.

#### **6. Completion Time**

6.1. All estimates and quotes are provided on the basis of normal working hours being from 7.00 am until 3:30 pm during ordinary weekdays (excluding public holidays).

6.2. Any variations to the scope of work that have been accepted by the relevant parties, will incur a time addition to the schedule which will be agreed upon accordingly.

6.3. Any date or time quoted for delivery and completion of the Works is an estimate only and Twigg Electric Pty Ltd shall endeavour to complete the Works at a time or times required by the Client, but failure to do so shall not confer any right of cancellation, termination or refusal of delivery on the Client's part or render Twigg Electric Pty Ltd liable for any loss or damages directly or indirectly sustained by the Client as a result thereof.

6.4. Twigg Electric Pty Ltd will invoice the Client when the job is complete to the AS/NZ 3000:2018 standard. Twigg Electric Pty Ltd will provide a certificate of compliance upon payment of the job.

6.5. The Client will not be relieved of any obligation to accept or pay for products by reason of any delay in delivery or any strike, lockout, unavailability of raw materials, accidents to machinery, differences with workmen, breakdowns, shortages of supplies or labour, fires, floods, storm or tempest, transport delays, acts of God, restrictions or intervention imposed by any Laws, regulations, Governments or agencies thereof and any other cause beyond the control of Twigg Electric Pty Ltd or any other cause whatsoever.

## **7. Retention of title**

Title of the goods remains with Twigg Electric Pty Ltd and does not pass to the client until the client has made payment in full for the goods.

7.1. Until payments of the goods have been made in full, the client will hold the goods in a fiduciary capacity on behalf of Twigg Electric Pty Ltd.

7.2. The goods must be kept in a manner in which they are distinguishable from the client's own goods.

7.3. The client agrees that whilst title of the goods remain with Twigg Electric Pty Ltd, Twigg Electric Pty Ltd has the right without any notice being provided to enter the client's premises and inspect the goods and to repossess the goods which may be in the client's possession when payment of invoices is overdue.

7.4. The client will be responsible on an indemnity basis should Twigg Electric Pty Ltd exercise their right under clause 7.3.

7.5. The entering of the premises by Twigg Electric Pty Ltd or Twigg Electric Pty Ltd's agent will not give rise to any action in trespass or similar.

7.6. The client agrees that where the goods have been repossessed by Twigg Electric Pty Ltd, Twigg Electric Pty Ltd has the right to deal with the goods in any manner which it deems fit.

## **8. Inspection**

8.1. The client shall examine the products immediately after delivery and Twigg Electric Pty Ltd shall not be liable for any failure of delivery, shortage, defect or damage unless Twigg Electric Pty Ltd receives details in writing within 14 days of the date of delivery of the products.

8.2. If Twigg Electric Pty Ltd is employed to install said product/s the Client shall not open, dismantle or otherwise handle the product/s. Twigg Electric Pty Ltd will not be liable for any loss, delay or damage occasioned by any products that appear to have been interfered with by the client or any other party.

## **9. Force Majeure**

Twigg Electric Pty Ltd 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 Twigg Electric Pty Ltd including, but not limited to war, strikes, lockouts, industrial disputes or unrest, government restrictions 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.

## **10. Products and Works**

If any products and works specified within this quotation are unavailable at the time of the works being carried out, Twigg Electric Pty Ltd in its absolute discretion may substitute a reasonable alternative.

## **11. Warranties / Defects**

11.1. To the extent required by statute, subject to the conditions of warranty as may be set out in The Australian Consumer Law located in Schedule 2 of the Competition and Consumer Act 2010 (Cth) Twigg Electric Pty Ltd warrants that if a defect in any of the Works carried out by Twigg Electric Pty Ltd is reported to Twigg Electric Pty Ltd within 12 months of the date of completion, then Twigg Electric Pty Ltd will either replace or remedy the Works subject to these Terms and Conditions.

11.2. This warranty will not be applicable in any of the following:

(i) Defect or damage caused which may be caused or partly caused by or arising through the failure of the Client to properly maintain any Works, follow any instructions or guidelines provided by Twigg Electric Pty Ltd, use of any Works in any other way than is outlined in the quotation or by the Client's negligence.

(ii) The Client continues to use any of the works after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user.

(iii) The Client allows someone other than a licensed professional to deal with the products. If the works fail due to fair wear and tear, any accident or act of God. Rectification of such a defect where this warranty does not apply shall be treated as a variation and charged accordingly.

11.3. The warranty shall cease and Twigg Electric Pty Ltd shall thereafter in no circumstances be liable under the terms of the warranty if the works are repaired, altered or overhauled without Twigg Electric Pty Ltd's express written consent.

11.4. In respect of all claims, Twigg Electric Pty Ltd shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.

11.5. Where the Client seeks to have defective goods replaced, Twigg Electric Pty Ltd must have received notice within 6 months of the Client receiving them and the goods must be returned to Twigg Electric Pty Ltd within 12 month of the Client receiving them.

11.6. Components and parts from third party suppliers are subject to the same warranty (if any) as is extended to Twigg Electric Pty Ltd by the supplier or manufacturer.

11.7. Defective components and parts covered by manufacturer's warranty will be ordered and replaced on an hourly basis.

## **12. Client Acknowledgements**

12.1. It is the sole responsibility of the Client to check and confirm the order with Twigg prior to accepting the Quote. Twigg Electric Pty Ltd will not be held liable for incorrect orders.

12.2. It is the responsibility of the Client to ensure that the Works can be completed without interruption, in a continuous work flow and on the mutually agreed date. Twigg Electric Pty Ltd reserves the right to charge the Client any extra costs incurred by Twigg Electric Pty Ltd by virtue of interruption including but not limited to additional return to site charges and travel costs.

12.3. The Client shall ensure that Twigg Electric Pty Ltd has clear and free access to the work site at all times to enable them carry out the Works. Twigg Electric Pty Ltd shall take all due and reasonable care when delivering and

installing the product/s in accordance with the Terms and Conditions. Twigg Electric Pty Ltd shall not be liable for any loss or damage to the site.

12.4. The Client accepts all liability for, and indemnifies Twigg Electric Pty Ltd against, any custom orders or additional requests that are outside the usual scope of works, including but not limited to anything that is labelled as a "client/client requirement." The usual scope of works, and what is outside same, is determined solely by Twigg Electric Pty Ltd.

### **13. Termination**

13.1. Any quote provided by Twigg Electric Pty Ltd is subject to inspection of the site. Twigg Electric Pty Ltd reserves the right to terminate or vary any agreement in the event a site is considered to be unsafe or unsuitable.

13.2. If the client fails to comply with any of these Terms and Conditions or being a natural person or persons commits any act of bankruptcy or being a corporation passes a resolution for winding up or liquidation (other than for the purposes of reorganisation or reconstruction) or enters into any composition or arrangement with creditors or if a receiver or manager is appointed for any property or assets of the client or becomes liable to be wound up by reason of insolvency or if any petition is presented for its winding up, or if a Liquidator or Provisional Liquidator is appointed, Twigg Electric Pty Ltd may, in addition to exercising all or any of its rights against the client, suspend any further deliveries and immediately recover possession of any products not paid for in accordance with the Terms and Conditions. Twigg Electric Pty Ltd will not be liable for any loss or damage the Client suffers as a result of Twigg Electric Pty Ltd exercising its rights under this Clause.

13.3. If a Client cancels or alters any order or part order for any product at any time after Twigg Electric Pty Ltd has received the order then Twigg Electric Pty Ltd reserves the right to charge to the Client the cost of any product/s or materials already acquired for the order together with cost of labour and tooling expended to the date of such cancellation or alteration. This is a genuine estimate of costs and expenses incurred by Twigg Electric Pty Ltd to date.

### **14. Personal Property Securities Act 2009 ("PPSA")**

14.1. The Client acknowledges and agrees that:

14.1.(i) Registrable security interest under the PPSA in all materials supplied or will be supplied by Twigg Electric Pty Ltd to the Client;

(ii) Twigg Electric Pty Ltd has the right to register a financing statement under the PPSA with respect to the security interest created by this agreement;

(iii) if Twigg Electric Pty Ltd registers a security interest under the PPSA, Twigg Electric Pty Ltd may exercise any or all remedies afforded to it as a secured party, without prejudice to any other rights or remedies arising out of a breach by the Client of any agreement with Twigg Electric Pty Ltd; and (iv) the materials supplied or will be supplied by Twigg Electric Pty Ltd to the Client are collateral for the purposes of the PPSA.

14.2. The Client waives any right the Client has under the PPSA to receive notice in relation to registration events.

14.3. The Client and Twigg Electric Pty Ltd agree that neither party will disclose information of the kind specified under Section 275(1) of the PPSA.

14.4. Twigg Electric Pty Ltd may elect, at its absolute discretion and at any time, that any section of the PPSA specified in Section 115 will not apply to the extent permitted by Section 115.

14.5. This clause shall survive the Termination of the Contract.

### **15. Privacy**

15.1. The Client hereby acknowledges that:

(i) Twigg Electric Pty Ltd collects personal information such as contact details, bank account details, insurance details and credit card details and holds such information for seven (7) years. The purpose of the collection of personal information is only for internal use.

(ii) they have been informed by Twigg Electric Pty Ltd that personal information about them may be disclosed to or acquired from or to a credit reporting agency.

(iii) if they require further information regarding Twigg Electric Pty Ltd Privacy Policy they may obtain the same by providing notice to Twigg Electric Pty Ltd.

15.2. The Client hereby agrees:

(i) that Twigg Electric Pty Ltd may contact any trade references or other credit references at any time whether now or in the future for the purpose of assessing credit worthiness.

(ii) To Twigg Electric Pty Ltd receiving from any other credit provider or providing to any credit provider any information whether by way of report record or otherwise relating to credit worthiness for the purposes of exchanging information, assessing credit worthiness and notification of default at any time whether now or in the future.

(iii) To Twigg Electric Pty Ltd obtaining from a credit reporting agency a credit report on the Client for the purposes of assessing any credit application and the Client further consents to Twigg Electric Pty Ltd obtaining such reports from time to time for the purposes of assessing credit worthiness during the continuance of credit provision.

(iv) To Twigg Electric Pty Ltd obtaining from a business which provides credit information a report or information in relation to the Client's commercial credit worthiness or commercial dealings and using such information for the purpose of assessing the Client's application for credit.

(v) That, in the event of default of payment of any of their debts, Twigg Electric Pty Ltd may disclose all information relating to the Client's account to its collection agency for the purpose of receiving any or all amounts outstanding.

## **16. General**

16.1. If any clause or part thereof of these Terms and Conditions is invalid or not enforceable in accordance with its terms, all other terms or parts thereof which are self-sustained and capable of separate enforcement without regard to the invalid or unenforceable clause or part thereof is and will continue to be valid and enforceable in accordance with its term.

16.2. The Client agrees that these Terms and Conditions are governed by and construed in accordance with the laws of the State of Victoria and the Client and Twigg Electric Pty Ltd submits to the non-exclusive jurisdiction of the Courts of the State of Victoria.

16.3. Subject to other clauses in these Terms and Conditions and implied provisions, Twigg Electric Pty Ltd shall not be liable whatsoever to the Client for any indirect, consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Twigg Electric Pty Ltd of these Terms and Conditions. In the alternative, Twigg Electric Pty Ltd's liability shall be limited to damages not exceeding the contract sum of the order.

16.4. Twigg Electric Pty Ltd may assign all or any part of its rights and obligations without the Client's consent.