

TERMS AND CONDITIONS OF TRADE

1. ACCEPTANCE

1.1. **These** terms and conditions form part of the contract (**Agreement**) between Marlin Marine Electrical Pty Ltd (A.C.N. 697 817 904) (**we, us** and/or **our**) and the customer (**you**) which is formed when you verbally or in writing:

- a) accept a quotation;
- b) sign a quotation that describes the Works that we will perform;
- c) request the provision of any Works;
- d) pay any deposit or part payment for Goods or Works;
- e) allow the commencement of Works; or
- f) act in any other manner which we reasonably interpret as constituting an intention for us to provide Works to you at your request.

1.2. You acknowledge that these terms and conditions embody the whole agreement between you and us and will prevail to the extent of any inconsistency with any other document or agreement between you and us.

2. DEFINITIONS

Goods means all goods supplied by us to you at your request or as necessary and incidental to the provision of Works under this Agreement.

Guarantor means the director(s) of the customer company entity (if applicable).

GST means any goods or services tax, value-added tax, consumption tax or similar tax including as that term is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means all intellectual and commercial property rights throughout the world including, without limitation, copyright, trademarks whether registered or unregistered, designs, patents, confidential information, know-how and trade secrets, whether or not now existing and whether or not registered or registrable and includes applications for and any right to apply for registration of such rights and includes all renewals and extensions.

Price means the price of the Works as set out in our tax invoice and includes GST where relevant.

Services means all services supplied by us to you under this Agreement and at your request from time to time.

Works means the total Goods and Services provided by us to you.

3. AUTHORISATION / OWNERSHIP

3.1. You warrant that you are either:

- a) the owner or tenant of the premises, site or vessel at which the Works are to be carried out; or
- b) an authorised agent of the owner or tenant of the site, premises or vessel at which the Works are to be carried out, with authority to engage us to undertake the Works.

3.2. You warrant that you have obtained all necessary authorisations from all relevant parties to contract with us for the Works and you are not prohibited at law or under any agreement from entering into an agreement to obtain the Works.

3.3. Failure to comply with this clause may result in you being liable to us for any subsequent loss or damage incurred by us.

4. PRICE AND PAYMENT

4.1. The Price will be the amount stated on the tax invoice and is payable in full.

4.2. Any Price quotation, unless expressly stated to be fixed, is an estimate only based on the anticipated scope of the Works reasonably apparent at the time of quoting.

4.3. We reserve our right to revise any Price quotation if any unforeseen factors or complications in the Works arise, in which case we will endeavour to seek your acceptance of any further Works to the extent possible.

4.4. We reserve our right to change the Price where you request a variation to the quote, you change the scope of the Works or the Works originally quoted are required to be substituted for other Works, for any reason, which are of a different Price.

4.5. Any quotation is only valid for the time stated on the quote. If no such period is specified on the quote, it will be valid for a period of 30 days from the date of issue.

4.6. The Price is payable within seven (7) days of us issuing a tax invoice to you, or otherwise in accordance with the payment terms specified on the tax invoice(s). This clause 4.6 is a material term of this Agreement.

4.7. We may require a partial deposit or payment for the full cost of the Goods and/or Works at our election or prior to commencing work.

4.8. For Works estimated to take longer than seven (7) days to complete from date of commencement, we reserve the right to issue progress invoices for Works completed at reasonable intervals.

4.9. If we are unable to complete or continue any part of the Works, or are delayed in providing the Works due to any circumstance beyond our reasonable control, we shall not be liable for the delay and may issue a progress invoice for Works completed up to the date the Works are ceased or delayed.

4.10. You acknowledge and agree that you may not:

- a) set-off;
- b) deduct; or
- c) withhold payment of any sum from the Price without express prior written consent from us.

4.11. Where a required deposit or progress invoice is unpaid, we reserve the right to cease work until payment is made.

4.12. Payment may be made by electronic funds transfer (online banking), bank cheque, credit or debit card or any other method agreed by us and you. Please note, card payments made via Stripe will incur a fee of 1.8% of the invoice total + 0.30 AUD for domestic cards (GST inclusive) and 3.5% of the invoice total + 0.30 AUD for international cards (GST inclusive).

4.13. If payment is not made within the timeframe stipulated in the relevant tax invoice(s), we are entitled to charge interest on any overdue amounts at the rate of six percent above the cash rate

last published by the Reserve Bank of Australia on any outstanding amount.

7.2. You must ensure that all insurance policies in respect of the site, premises, vessel equipment and personal property are up to date and accurate.

5. DEFAULT AND CONSEQUENCES OF DEFAULT

5.1. Without prejudice to any other remedies we may have, if at any time you are in breach of any obligation under this Agreement, including those relating to payment, we may suspend or terminate the supply of any Works to you.

5.2. Either party may terminate this Agreement immediately by notice to the other party:

- a) if the other party breaches a material term of this Agreement capable of being remedied and fails to remedy the breach within 7 days after being given notice of breach;
- b) if the other party breaches a material term of this Agreement which is not capable of remedy; or
- c) if the other party becomes insolvent, convenes a meeting with its creditors, proposes or enters an arrangement with creditors, or makes the assignments for the benefit of its creditors.

5.3. If you terminate this Agreement for any reason whatsoever you must immediately pay us for all Works already ordered from or supplied by us.

5.4. Without prejudice to any other remedies at law, we will be entitled to cancel all or any part of your order where:

- a) any money payable to us becomes overdue;
- b) you stop or reverse payment on any amount required to be paid for the Works;
- c) you die; or
- d) you become insolvent

and in the event of such cancellation, all amounts owing to us for the Works become due and payable immediately.

5.5. We may take any action we deem necessary to recover any outstanding amount which is overdue for payment. You agree to pay our costs and disbursements reasonably incurred in pursuing any recovery action, or any other claim or remedy, against you, including collection costs, debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by you to us irrespective of whether pursuit of the recovery action, claim or remedy is successful.

6. TITLE

6.1. Ownership of the Goods (including as part of Services rendered) does not pass from us to you until you have paid for all amounts owing to us in cleared funds.

6.2. Any Goods supplied by us will be at your sole risk immediately upon delivery to you or into a third party's custody on your behalf, whichever occurs sooner.

6.3. We may commence proceedings to recover the Price even if the ownership of the Goods has not passed to you by reason of the operation of this clause.

7. GRANT OF ACCESS

7.1. You must ensure the safe and clear access to the site, premises or vessel of the Works at all times to enable us to undertake the Works.

8. CONSUMER LAW GUARANTEES

8.1. Nothing in these terms and conditions limits or excludes any rights, guarantees, warranties, representations or conditions that you are entitled to by law that can't be limited or excluded, including under the Australian Consumer Law (ACL) which is contained in Schedule 2 to the *Competition and Consumer Act 2012* (Cth).

8.2. To the extent permitted by law, all terms, guarantees, warranties, representations or conditions which are not expressly stated in this Agreement are excluded. If we are liable for a breach of an imposed term, guarantee, warranty, representation or condition or warranty, our liability is, at our discretion, limited to: (a) the replacement of the Goods or the supply of equivalent goods or the supply of the Services again; (b) the repair of the Goods; (c) the payment of the cost of replacing the Goods or acquiring equivalent goods; or (d) the payment of the cost of having the Goods repaired or having the Services supplied again.

8.3. To the extent permitted by law, we will not be liable for any special, indirect or consequential loss or damage, loss of profit or opportunity, business interruption or loss of data arising out of or in connection with the Goods or Services, including as a result of the late or non-supply of Goods or Services, whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.

9. GUARANTEE & INDEMNITY

9.1. The Guarantor guarantees to us the prompt performance of all the customer's obligations contained in this Agreement.

9.2. If the obligation is to pay money, we may recover the money from the Guarantor as a liquidated debt.

9.3. The Guarantor's liability is not affected by:

- a) the granting of any time, forbearance or other concession by us to the customer or any Guarantor;
- b) any absolute or partial release of the customer or any Guarantor or any compromise with the customer or any Guarantor; or
- c) any variation, assignment or termination of this Agreement.

9.4. Except to the extent expressly required by law, you agree to indemnify us and our directors, agents and employees against all actions, claims, losses, liabilities, costs or expenses (including reasonable legal costs or expenses) which may be brought against, suffered or incurred by any of them, arising directly or indirectly out of or in relation to damage to the premises, the work site or any of your property at the premises or in respect of injury to any person at your premises or as the result of a breach of this Agreement by you.

9.5. Except where prohibited by law, the extent of our liability to you shall not exceed the Price.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1. We own and hold an exclusive licence of all Intellectual Property Rights in any plans, designs, graphics, text, drawings, specifications, diagrams or other like materials created by us with respect to the Works undertaken or contemplated.
- 10.2. You warrant that any plans, designs, graphics, text, drawings, specifications, diagrams or other materials you supply to us will not infringe the Intellectual Property Rights of any third party.

11. GENERAL PROVISIONS

- 11.1. A notice given under this Agreement must be in writing.
- 11.2. If the performance of this Agreement or any obligation under it is prevented, restricted or interfered with by reason of an act of God, fire, lightning, flood or other natural disaster, subsidence, power or gas shortage, inability or delay in obtaining any local government approvals, consents or permits or because of any industrial dispute of any kind or any other cause, outside of the affected party's control, the affected party, upon giving prompt notice to the other party, is excused from such performance to the extent of such prevention, restriction or interference.
- 11.3. This Agreement contains the entire agreement between the parties and can only be amended, supplemented, or waived in writing signed by both parties. The failure of either party to enforce, or the delay by either party in enforcing, any of its rights shall not be deemed a continuing waiver or modification of this Agreement.
- 11.4. This Agreement is governed by the laws of Queensland and the parties submit to the non-exclusive jurisdiction of the Courts of Queensland.
- 11.5. If any clause or part of the clause is found to be void or unenforceable by a Court of competent jurisdiction, that part will be severed, and the rest of the Agreement will remain in force.
- 11.6. We may license or subcontract all or any of our obligations or rights under this Agreement without your consent, including the carrying out of any of the Works, and will endeavour to provide reasonable notice of any change to you.
- 11.7. We may update these terms and conditions at our discretion from time to time.
- 11.8. In interpretation of these terms and conditions:
 - a) References to any party includes their executors, administrators, employees, sub-contractors, agents and authorised representatives;
 - b) If the day on which anything is to be done is a Saturday, Sunday or a public holiday, then it may be done on the next business day;
 - c) Obligations affecting more than one person or party bind them jointly and each of them severally;
 - d) Capitalisation of words is for convenience only; and
 - e) All references to currency are to Australia dollars (AUD).