

Tradesmen On Time (Qld) Pty Ltd
Licenced Electrical Contractors (Lic. 71398)



Email: office@tmot.com.au Web: www.tmot.com.au

Phone: 3353 8751/0415623770 Postal Address: PO Box 40, Arana Hills Qld. 4054

ACN: 140830146 ABN: 95 951 971 625

Tradesmen on Time Qld Pty Ltd ATF Tradesmen on Time Unit Trust (ACN 140830146)

TERMS AND CONDITIONS OF AGREEMENT

Definitions

1. In this Agreement the following definitions apply.

(a) **Company** means **Tradesmen on Time Qld Pty Ltd ATF Tradesmen on Time Unit Trust (ACN 140830146)** and where applicable any subsidiaries or related companies as defined in the *Corporations Act 2001* (Cth) and their servants or agents.

(b) **Customer** means any person, firm, corporation, government, semi-government or local government department or authority, its successors, assignees, trustees, administrators or liquidators, to whom or to which Goods or Services are sold by the Company.

(c) **Force Majeure** includes strike, industrial dispute, raw material shortage, supplier issue, natural disaster, collision, accident, contamination or radiation, crime, civil unrest, act of terrorism, embargo, government sanction, war or event outside the control of the Company.

(d) **Goods** means goods or services provided by the Company to the Customer at any time including quotations, electrical products or related goods or services.

(e) **Indemnity** whenever it is herein provided that the Customer must indemnify the Company, then the indemnity to be provided must be a full and complete indemnity from and against liability in respect of all claims, demands, action, suits, proceeds and costs.

(f) **Invoice** includes account, payment or monies paid in accordance with the Company's systems.

(g) **Services** means any electrical works carried out by the Company.

General Terms

2. For pre-approved accounts, excluding specific instalment contracts and other pre-arranged contracts, the Customer must pay all invoices due and owing to the Company on or before 7 days from the date of invoice unless prior written arrangements have been made with the Company. Failing to pay an invoice within 7 days of the date of invoice constitutes an event of default by the Customer ('Default').

3. For accounts that have not been pre-approved, the Customer must pay all invoices due and owing to the Company in advance by cash or electronic funds transfer unless prior written arrangements have been made with the Company. Failing to pay an invoice in advance or as otherwise agreed constitutes an event of default by the Customer ('Default').

4. The Company may at any time without notice, modify, terminate or suspend the Customer's right to receive Goods or Services from the Company on credit and is not liable for any damages, costs, penalties or charges incurred by the Customer as a result of the altered supply or non-supply of Goods or Services by the Company.

5. All outstanding invoices become immediately due and payable in the event of Default on payment by the Customer of any invoice or account, regardless of whether or not some invoices may not otherwise have become due for payment.

6. Any amount that remains unpaid for 30 days from the date of invoice incurs interest at the rate of 1.5% per month or part thereof as an administration charge. The Customer agrees that this is a fair and reasonable charge and is directly relevant to the likely damage that the Company might suffer as a result of non-payment by the Customer. Interest will be calculated on all outstanding amounts from the date of issue of the invoice.

7. Any unpaid amounts that may from time to time be overdue to the Company and any interest charged is recoverable by the Company from the Customer as a liquidated debt.

8. Payment must be made by the Customer to the Company without any set off or deduction against any other amount whatsoever.

9. In the event of default on payment by the Customer, the Customer will be liable for all losses, liabilities, costs and expenses (including but not limited to debt recovery and legal expenses, including commission charged by debt recovery agents and solicitor's costs) on a full indemnity basis or on a solicitor and own client basis whichever is the higher, incurred by the Company seeking to recover the default amount, the Customer hereby charges its interest in any and all land or personal property registered in its name as security for payment of monies it owes the Company.

10. In accordance with s.18E(8)(c) of the *Privacy Act 1988*, the Customer acknowledges that the Company has informed it that certain items of personal information about the Customer contained in/or relating to the Customer's Application for Credit and permitted to be kept on a credit information file might be disclosed to a credit reporting agency. Furthermore, the Customer agrees, in accordance with s.18H(3), s.18K(1)(b), s.18K(1)(c), s.18K(1)(h) and s.18N(1)(b) of the *Privacy Act 1988* that use by the Company of the relevant information referred to in those sections may occur for the purpose of assessing the Customer's credit application.

11. The Customer is responsible for acquiring necessary consents from Government and/or other authority – including any Customer internal authority, with regard but not limited to matters such as environmental approvals, land use and rights of way etc.

12. Where any manuals or drawings are required in order for the Customer to enjoy or use the Services or as a legal requirement, where the Customer requires additional copies or replacement copies the Company may charge additional fees for the provision of such additional or replacement manuals or drawings.

13. If the Customer requires a variation to the Services, the Company will provide a quotation for performing the Services as varied for which an additional sum will be added to the price if accepted by the Customer. If the Customer does not accept the quotation, the Company is not obliged to carry out the variation. Customer acceptance of the variation will be by means of either issuing a purchase order referencing the variation quotation or by signing and stating the Customer's agreement to the quotation and returning it to the Company. The Company will not undertake any requested variation until and after written agreement is provided by the Customer.

14. The Customer will ensure that the Company has free and unimpeded access to the place in which the Services are to take place and that the Customer will do all things to ensure that the Company is not delayed by matters within the control of the Customer.

Jurisdiction

15. This contract is deemed to have been entered into in the State of Queensland. Any legal action arising out of, or in respect of the contract and/or the interpretation thereof must be brought only in the State of Queensland. The parties further agree to issue any proceedings in the Brisbane registry of the appropriate Court having monetary jurisdiction over the matter.



Email: office@tmot.com.au Web: www.tmot.com.au

Phone: 3353 8751/0415623770 Postal Address: PO Box 40, Arana Hills Qld. 4054

ACN: 140830146 ABN: 95 951 971 625

Compliance

16. Title in the Goods pass from the Company to the Customer upon full payment by the Customer to the Company.
17. The Customer is not entitled to damages or compensation from the Company for any loss suffered by reason of late delivery or if the Goods are damaged or destroyed due to the conditions of the site of the delivery or repair of the Goods.
18. The Company gives no warranty condition or representation express or implied as to the capacity or fitness of the Goods for any particular purpose, unless that particular purpose was specified to the Customer at the time of quotation by the Company and reserves the right to substitute similar Goods where necessary.
19. The Company reserves the right to amend rates and/or terms and conditions from time to time without prior notice to the Customer.
20. The Customer irrevocably authorises, permits and consents to the Company entering any premises to retrieve and recover possession of any Goods which the Company may have provided to the Customer or any other such items to which the Company has the title of the right to exclusive or sole possession. This irrevocable authority allows the Company to use such force as is reasonably required to open doors or any other entrances even if the use of such force would damage the door or entrance. The Customer agrees that the presence of the Company or its agents or servants at the premises and the use of such force and the occasioning of damages will not vest the Customer with any cause of action whatsoever against the Company and the Company may refer to this clause should any right or entitlement of the Company be called into question.

Duties and Charges

21. Unless otherwise stated, all rates, charges and/or prices are quoted exclusive of GST, duty, taxes, bank transfer fees, or any other statutory charge or fee payable in connection with the provision of Goods.
22. If the Goods are damaged, unable to be delivered or destroyed due to Force Majeure the Customer agrees the Company is not liable for any repair, replacement or delivery costs of the Goods or for any loss or damage the Customer incurs as a result whether caused directly or indirectly by the Force Majeure.

Security interest and charge

23. This clause applies to the extent that this Agreement provides for a 'security Interest' for the purposes of the *Personal Property Securities Act 2009* (Cth) ("PPS Law").
24. References to PPS Law in this Agreement include references to amended, replacement and successor provisions of it.
25. The Company is at liberty to register its security interest as a purchase money security interest under the PPS Law ("PMSI"). The Customer must do anything (such as obtaining consents and signing documents) which the Company requires for the purposes of:
 - (a) ensuring that the Company's security interest is enforceable, perfected and otherwise effective under the PPS Law;
 - (b) enabling the Company to gain first priority (or any other priority agreed to be the Company in writing) for its security interest; and
 - (c) enabling the Company to exercise rights in connection with the security interest.
26. The Company may recover from the Customer the cost of doing anything under this clause, including but not limited to registration fees.
27. The rights of the Company under this document are in addition to and not in substitution for the Company's rights under any other law (including PPS Law) and the Company may choose whether to exercise rights under the PPSA, enforce the terms of these terms and conditions, and/or under other law, as it sees fit.
28. To the extent that Chapter 4 of the PPS applies to the security interest under this agreement, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of this Agreement in respect of all goods to which that section can be applied:
 - (a) section 95 (notice of removal of accession to the extent it requires the Company to give notice to the Renter);
 - (b) section 96 (retention of accession);
 - (c) section 121(4) (notice to grantor);
 - (d) section 125 (obligations to dispose of or retain collateral);
 - (e) section 130 (notice of disposal to the extent it requires the Company to give notice to the Renter);
 - (f) section 129(2) and 129(3);
 - (g) section 132(3)(d) (contents of statement of account after disposal);
 - (h) section 132(4) (statement of account if no disposal);
 - (i) section 135 (notice of retention);
 - (j) section 142 (redemption of collateral); and
 - (k) section 143 (reinstatement of security agreement).
29. The following provisions of the PPS Law confer rights on the Company:
 - (a) section 123 (seizing collateral);
 - (b) section 126 (apparent possession);
 - (c) section 128 (secured party may dispose of collateral);
 - (d) section 129 (disposal by purchase); and
 - (e) section 134(1) (retention of collateral).
30. The Customer agrees that in addition to those rights, the Company shall, if there is default by the Customer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods or Goods, not only under those sections but also, as additional and independent rights, under this document and the Customer agrees that the Company may do so in any manner it sees fit, including (in respect of dealing and disposal) by private or public sale, lease or license.
31. The Customer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.
32. The Company and the Customer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Customer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply to it. The Agreement in this sub-

Tradesmen On Time (Qld) Pty Ltd

Licensed Electrical Contractors (Lic. 71398)



Email: office@tmot.com.au Web: www.tmot.com.au

Phone: 3353 8751/0415623770

Postal Address: PO Box 40, Arana Hills Qld. 4054

ACN: 140830146 ABN: 95 951 971 625

clause is made solely for the purposes of allowing the Company the benefit of section 275(6)(a) and the Company shall not be liable to pay damages or any other compensation or be subject to injunction if the Company breaches this sub-clause.

Inspection and acceptance

33. The Customer may inspect the Goods on delivery or receipt and must provide written notice to the Company within forty-eight (48) hours of delivery if the Customer alleges that the Goods do not fit the description of the Goods provided in the Proposal.

34. The return of any Goods must be at the expense of the Customer and will only be accepted by the Company if the Company accepts the return of the Goods in writing and the Goods are in a saleable condition. The Company reserves the right to charge a handling fee of 10% of the purchase price for Goods returned.

35. The Customer is responsible for any loss or damage to Goods caused during the period of time at the Customer's site. The Customer agrees to pay for the costs of any repairs or replacement as assessed by the Company or its agent within thirty (30) days of being notified.

Cancellation

36. The Customer does not have a right to cancellation unless agreed in writing between the Company and the Customer. If agreed in writing, the Customer must exercise its right to cancellation not later than seven (7) days prior to the estimated date of provision of Goods or Services to the Customer. On cancellation, any deposit paid by the Customer to the Company is forfeited by the Customer to the Company.

37. If any Goods or Services have already been purchased, prepared or provided by the Company to the Customer at the time the Customer has made a cancellation, the Customer is liable for the full cost of the Goods or Services already provided by the Company at the time of cancellation.

38. Where the Customer has caused any delay or cancellation, the Customer agrees that any deposit paid by the Customer to the Company is not to be refunded to the Customer.

Default

39. In the event of default on payment by the Customer, the Customer will be liable for all losses, liabilities, costs and expenses (including but not limited

to all debt recovery and legal expenses) on a full indemnity basis or on a solicitor and own Customer basis whichever is the higher, incurred by the Company seeking to recover the default amount.

40. A certificate signed by a credit manager or director of the Company shall be sufficient evidence that the Customer is indebted to the Company in the amount specified in the certificate in respect of the Goods.

41. Any unpaid amounts that may from time to time be overdue and any interest charged shall be recoverable from the Customer as a liquidated or unliquidated debt.

42. Payment shall be made by the Customer to the Company without any set off or deduction against any other amount whatsoever.

43. If the Customer defaults on paying the full amount due and owing to the Company for the provision of Goods, the Customer irrevocably authorises, permits and consents to the Company:

a) Registering its security interest in the Goods as a purchase money security interest under the PPS Law ("PMSI"). The Customer must do anything (such as obtaining consents and signing documents) which the Company requires for the purposes of:

(i) ensuring that the Company's security interest is enforceable, perfected and otherwise effective under the PPS Law;

(ii) enabling the Company to gain first priority (or any other priority agreed to by the Company in writing) for its security interest; and

(iii) enabling the Company to exercise rights in connection with the security interest.

The Company may recover from the Customer the cost of doing anything under this clause, including but not limited to registration fees;

b) Registering an interest in any and all land registered in the Customer's or it's Directors' names as security for payment of monies it owes the Company; and

c) Entering any premises including by using reasonable force to seize, take possession of, retrieve and recover possession of any Goods provided by the Company to the Customer which the Customer has not paid for in full and any other such Goods to which the Company has the title of the right to exclusive or sole possession. The Customer agrees that the presence of the Company or it's agents or servants at the premises and the use of such force and the occasioning of damages will not vest the Customer with any cause of action whatsoever against the Company and the Company may refer to this clause should any right or entitlement of the Company be called into question.

Delivery

44. All quotes are based on pick up of the Goods at the address designated by the Company. Delivery charges may be in addition to the quote provided.

45. Any permits and/or licence fees and toll charges incurred by the Company may be charged to the Customer's account.

46. This agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement. The agreement may be entered into by and becomes binding on the parties named in the agreement upon one party signing the agreement that has been signed by the other (or a photocopy or facsimile copy of that Agreement) and transmitting a facsimile copy of it to the other party.

Acknowledgement

I/We the undersigned declare that all information provided to the Company for the purposes of assessing the Customer's suitability for credit and provision of Goods and Services is true and correct in every particular.

I/We further acknowledge that acceptance of a quote from the Company is acknowledgement that I/we have read understand and agree to the above terms and conditions.

Signature:

Date: