









**14. Title**

- 14.1 Driftwind Electrical and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Driftwind Electrical all amounts owing for the particular Goods; and
  - (b) the Client has met all other obligations due by the Client to Driftwind Electrical in respect of all contracts between Driftwind Electrical and the Client.
- 14.2 Receipt by Driftwind 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 and until then Driftwind Electrical's ownership or rights in respect of the Goods shall continue.
- 14.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until Driftwind Electrical shall have received payment and all other obligations of the Client are met; and
  - (b) until such time as ownership of the Goods shall pass from Driftwind Electrical to the Client Driftwind Electrical may give notice in writing to the Client to return the Goods or any of them to Driftwind Electrical. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
  - (c) Driftwind Electrical shall have the right of stopping the Goods in transit whether or not delivery has been made; and
  - (d) if the Client fails to return the Goods to Driftwind Electrical then Driftwind Electrical or Driftwind Electricals' agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated and take possession of the Goods; and
  - (e) the Client is only a bailee of the Goods and until such time as Driftwind Electrical has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to Driftwind Electrical for the Goods, on trust for Driftwind Electrical; and
  - (f) the Client shall not deal with the money of Driftwind Electrical in any way which may be adverse to Driftwind Electrical; and
  - (g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of Driftwind Electrical; and
  - (h) Driftwind Electrical can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
  - (i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that Driftwind Electrical will be the owner of the end products.

**15. Personal Property Securities Act 2009 ("PPSA")**

- 15.1 In this clause:
- (a) financing statement has the meaning given to it by the PPSA;
  - (b) financing change statement has the meaning given to it by the PPSA;
  - (c) security agreement means the security agreement under the PPSA created between the Client and Driftwind Electrical by these terms and conditions; and
  - (d) Security interest has the meaning given to it by the PPSA.
- 15.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions:
- (a) constitute a security agreement for the purposes of the PPSA; and
  - (b) create a security interest in:
    - (i) all Goods previously supplied by Driftwind Electrical to the Client (if any);
    - (ii) all Goods that will be supplied in the future by Driftwind Electrical to the Client.
- 15.3 The Client undertakes to:
- (a) 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 Driftwind Electrical may reasonably require to:
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 15.3(a)(i) or 15.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, Driftwind 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;

- (c) not register a financing change statement in respect of a security interest without the prior written consent of Driftwind Electrical;
- (d) 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 Driftwind Electrical; and
- (e) Immediately advise Driftwind 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.

- 15.4 Driftwind 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.
- 15.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 15.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 15.7 Unless otherwise agreed to in writing by Driftwind Electrical, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8 The Client shall unconditionally ratify any actions taken by Driftwind Electrical under clauses 15.3 to 15.5.

## 16. Security and Charge

- 16.1 Despite anything to the contrary contained herein or any other rights which Driftwind Electrical may have howsoever:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Driftwind Electrical or Driftwind Electricals' nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that Driftwind Electrical (or Driftwind Electricals' nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
  - (b) should Driftwind Electrical elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify Driftwind Electrical from and against all Driftwind Electrical's costs and disbursements including legal costs on a solicitor and own client basis.
  - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Driftwind Electrical or Driftwind Electrical's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 16.1.

## 17. Defects

- 17.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify Driftwind Electrical of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Driftwind Electrical an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Driftwind Electrical has agreed in writing that the Client is entitled to reject, Driftwind Electricals' liability is limited to either (at Driftwind Electricals' discretion) replacing the Goods or repairing the Goods except where the Client has acquired Goods as a consumer within the meaning of the Competition and Consumer Act 2010 (CWLth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.
- 17.2 Goods will not be accepted for return other than in accordance with 17.1 above.

## 18. Warranty

- 18.1 Subject to the conditions of warranty set out in clause 18.2 Driftwind Electrical warrants that if any defect in any workmanship of Driftwind Electrical becomes apparent and is reported to Driftwind Electrical within twelve (12) months of the date of delivery (time being of the essence) then Driftwind Electrical will either (at Driftwind Electrical's sole discretion) replace or remedy the workmanship.
- 18.2 The conditions applicable to the warranty given by clause 18.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - (i) failure on the part of the Client to properly maintain any Goods; or
    - (ii) failure on the part of the Client to follow any instructions or guidelines provided by Driftwind Electrical;
 or

- (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
  - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
  - (v) fair wear and tear, any accident or act of God.
- (b) the warranty shall cease and Driftwind Electrical shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Driftwind Electrical's consent.
- (c) in respect of all claims Driftwind Electrical 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.

- 18.3 For Goods not manufactured by Driftwind Electrical, the warranty shall be the current warranty provided by the manufacturer of the Goods. Driftwind Electrical shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 18.4 The conditions applicable to the warranty given on Goods supplied by Driftwind Electrical are contained on the "Warranty Card" that will be supplied with the Goods.

## **19. Intellectual Property**

- 19.1 Where Driftwind Electrical has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in Driftwind Electrical, and shall only be used by the Client at Driftwind Electricals' discretion.
- 19.2 The Client warrants that all designs or instructions to Driftwind Electrical will not cause Driftwind Electrical to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Driftwind Electrical against any action taken by a third party against Driftwind Electrical in respect of any such infringement.
- 19.3 The Client agrees that Driftwind Electrical may use any documents, designs, drawings or Goods created by Driftwind Electrical for the purposes of advertising, marketing, or entry into any competition.

## **20. Default and Consequences of Default**

- 20.1 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 Driftwind Electrical's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by Driftwind Electrical.
- 20.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify Driftwind Electrical from and against all costs and disbursements incurred by Driftwind Electrical in pursuing the debt including legal costs on a solicitor and own client basis and Driftwind Electrical's collection agency costs.
- 20.4 Without prejudice to any other remedies Driftwind Electrical may have, if at any time the Client is in breach of any obligation (including those relating to payment) Driftwind Electrical may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. Driftwind Electrical will not be liable to the Client for any loss or damage the Client suffers because Driftwind Electrical has exercised its rights under this clause.
- 20.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 20.6 Without prejudice to Driftwind Electricals' other remedies at law Driftwind Electrical shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Driftwind Electrical shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to Driftwind Electrical becomes overdue, or in Driftwind Electrical's opinion the Client will be unable to meet its payments as they fall due; or
  - (b) 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
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## **21. Compliance with Laws**

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

- 21.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 21.4 Both parties must ensure that any persons in control of any electrical equipment will comply with the instructions for the electrical safety of any persons or any property and will not wilfully interfere with or misuse anything provided for electrical safety, nor will they place any person in any electrical risk.

## **22. Cancellation**

- 22.1 Driftwind 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 Driftwind Electrical shall repay to the Client any sums paid in respect of the Price. Driftwind Electrical shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by Driftwind Electrical (including, but not limited to, any loss of profits) up to the time of cancellation.
- 22.3 Cancellation of orders for Goods made to the Client's specifications or non-stocklist items will definitely not be accepted, once production has commenced.

## **23. Privacy Act 1988**

- 23.1 The Client and/or the Guarantor/s (herein referred to as the Client) agree for Driftwind Electrical to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by Driftwind Electrical.
- 23.2 The Client agrees that Driftwind Electrical may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) 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
  - (d) to assess the creditworthiness of the Client.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 23.3 The Client consents to Driftwind Electrical being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 23.4 The Client agrees that personal credit information provided may be used and retained by Driftwind Electrical for the following purposes (and for other purposes as shall be agreed between the Client and Driftwind Electrical or required by law from time to time):
- (a) the provision of Goods; and/or
  - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or

## **24. Building and Construction Industry Payments Act 2004**

- 24.1 At Driftwind Electricals' sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Payments Act 2004 may apply.
- 24.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 of Queensland, except to the extent permitted by the Act where applicable.

## **25. General**

- 25.1 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.
- 25.2 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.
- 25.3 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Queensland.
- 25.4 Driftwind Electrical shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Driftwind



- 25.5 In the event of any breach of this contract by Driftwind Electrical the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 25.6 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 Driftwind Electrical nor to withhold payment of any invoice because part of that invoice is in dispute.
- 25.7 Driftwind Electrical may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 25.8 The Client agrees that Driftwind Electrical may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Driftwind Electrical notifies the Client of such change. The Client shall be under no obligation to accept such changes except where Driftwind Electrical supplies further Goods to the Client and the Client accepts such Goods.
- 25.9 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.
- 25.10 The failure by Driftwind Electrical to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Driftwind Electricals' right to subsequently enforce that provision.
- 25.11 If the terms of this Disclaimer are inconsistent with the terms of an agreement for services under which Driftwind Electrical, has provided you with advice, data, information, estimates, projections, forecasts or forward-looking statements (**Quote/Contract/Agreement/Proposal**) then the terms of that agreement prevail over this Disclaimer to the extent of the inconsistency.
- 25.12 The nature of the services delivered by Driftwind Electrical include the provision of information and advice on matters that are incapable of precise determination, subject to subjective interpretation, rapidly changing conditions and other factors beyond the control of Driftwind Electrical
- 25.13 Subject to anything to the contrary stated in the Contract/After-Sales Proposal:
- 25.14 no representation or warranty of any kind (whether implied, express or statutory, and including without limitation, warranties for non-infringement of third party rights, ownership, fitness for purpose, accuracy, completeness, reliability or currency) is given in conjunction with any advice, data, information, estimates, projections, statements, forecast or forward-looking statements, materials or services (including content derived from or produced by a person unrelated to Driftwind Electrical) provided to you by or on behalf of Driftwind Electrical.
- 25.15 no representation, guarantee or warranty is given as to the accuracy, completeness, or likelihood of achievement or reasonableness of any forecasts, projections or forward-looking statements made by or on behalf of Driftwind Electrical (including such forecasts and projections that relate to changes in the electricity prices, the prices of other types of energy, and the amounts of charges and taxes imposed by the government on energy retailers, energy distributors or other energy industry participants or your energy-related expenses or anticipated cost savings). Forecasts, projections and forward-looking statements are, by their nature, subject to significant uncertainties and contingencies, and they should not be taken as implying that the assumptions upon which the projections have been prepared are correct or exhaustive;
- 25.16 Driftwind Electrical, its employees, agents and independent contractors are not liable for any loss, expense or cost (including without limitation, any consequential or indirect loss) that you incur directly or indirectly as a result of or in connection with advice, data, information, estimates, projections, forecasts or forward-looking statements or services provided to you by or on behalf of Driftwind Electrical; and
- 25.17 any liability of Driftwind Electrical and its directors, employees and contractors for breach of a warranty or condition given in conjunction with services supplied by Driftwind Electrical which cannot be excluded by law is limited, as far as the law permits, to re-supplying the services or paying the cost of re-supplying the services, replacing equipment, cabling and the choice to be made by Driftwind Electrical, in its sole discretion.
- 25.18 Unless specifically stated otherwise, any advice has been prepared without considering your objectives, financial situation or needs and constitutes only general advice. Before acting on any advice, Driftwind Electrical recommends that you consider whether it is appropriate for your circumstances