

# **ELECTRO AVENUE PTY LTD TERMS AND CONDITIONS OF TRADE**

## **1. APPLICATION OF THESE TERMS AND CONDITIONS**

In this agreement, "the Contractor" is Electro Avenue Pty Ltd ABN 99 607 474 733 trading as Elektrik Avenue, and its successors and assigns or any person acting on behalf of and with the authority of Electro Avenue Pty Ltd; "the Customer" is the individual, company or other entity requesting goods and services from the Contractor and named as the Customer on the Contractor's quote, contract and other paperwork; "Goods" means all goods sold or otherwise made available to the Customer by the Contractor including but not limited to air conditioning systems, solar systems and associated electrical components; "Site" means the place where the Contractor's work will be carried out; and "Services" means the installation of the goods and associated electrical services.

## **2. QUOTES**

### **2.1 Contractor's Quote**

The Contractor shall give the Customer a quote specifying the Goods and Services required in order to fulfill the Customer's instructions and a cost estimate of the Goods and Services.

### **2.2 Acceptance by the Customer**

Where the Contractor has given the Customer a quote:

- a) the Contractor need not commence the Services until the quote has been accepted by the Customer;
- b) the Customer shall accept the quote by signing and returning a true copy of the quote accompanied by a purchase order number, if applicable;
- c) quotes are valid for thirty (30) days only unless an extension has been authorised by the Contractor; and
- d) the Customer warrants that it has not relied on any representation by the Contractor other than as supplied in writing in the quote.

### **2.3 Contractor May Revise Quote**

The Contractor may amend the quote, if not accepted within 30 days from the date of the quote, to take into account any rise or fall in the cost of the Goods and Services as quoted.

### **2.4 Cancellation**

The Customer shall indemnify the Contractor from any costs, losses or expenses should the Customer cancel an accepted quote or contract. The time for payment for such cancellation shall be seven (7) days from receipt of the Contractor's invoice.

## **3. CONTRACTOR'S TRADING HOURS**

The Contractor's normal trading hours are 7am-5pm Monday to Friday. Work performed (at the Customer's request) outside those hours or on a public holiday will be at the Contractor's discretion and will be subject to a surcharge (rates on application).

## **4. SITE ACCESS**

The Customer shall provide exclusive Site access for the Contractor to complete the Services. Any costs, losses or expenses incurred by the Contractor due to interrupted site access will be charged to the Customer.

## **5. SERVICES BELOW THE GROUND**

Before the Contractor's Services are due to start, and where appropriate, the Customer shall clearly mark the exact location and identify all services above and below ground at the Site, including, but not limited to drains, pipes, sewers, mains and telephone and data cables, to enable the Contractor to prevent damage to all such services. These plans can be requested from the Dial Before You Dig website at [www.1100.com.au](http://www.1100.com.au) or phone 1100. Should the Customer fail to provide the Contractor with the appropriate plans for the Site as specified, the Customer shall indemnify the Contractor from any claim for costs, expenses or losses incurred should services be damaged.

## **6. VARIATIONS**

**6.1** Where there are variations to an accepted quote or contract the Customer shall indemnify the Contractor from any additional cost incurred by the Contractor, should the Customer increase the scope of the Goods and/or Services to be provided by the Contractor.

**6.2** Within a period subject to a progress payment, those variations shall be payable at that time and no later.

## **7. UNFORSEEN CIRCUMSTANCES**

The Contractor shall not be responsible for any problems with the Site which are only revealed when installing the Goods. The Contractor will carry out any work needed to fix any such problem if it is considered necessary for satisfactory installation of the Goods. Any additional work necessary due to an unforeseen circumstance is a variation and subject to clause 6. If a price is not agreed, the charge will be the actual cost plus another twenty percent (20%) for the work.

## **8. 'DO AND CHARGE'**

The hourly rate for 'Do and Charge' work may change should the Contractor experience latent conditions or obstacles requiring the hire of special equipment to complete the work

## **9. REMOTE AREA WORK**

The Customer shall pay the Contractor travel allowance, accommodation and other applicable fees if the Site is in a remote area. Fees are available on application to the Contractor's office.

## **10. THE CONTRACTOR'S SOLAR POWER GUARANTEE**

**10.1** The Contractor's guaranteed money saving solutions are based on information provided by the Customer prior to the system selection and installation. The Contractor shall not be held accountable should the supplied information prove to be incorrect.

**10.2** Changes to the Customer's circumstances or severe weather abnormalities may reduce or influence the system performance and may give cause to invalidate the Contractor's solar power guarantee.

## **11. SOLAR HOT WATER INSTALLATIONS**

**11.1** When the Contractor conducts a solar to solar installation, it will only include reconnection of the electrical circuit to the hot water unit. The Customer shall indemnify the Contractor from any costs and expenses incurred for issues with the existing electrical circuit.

**11.2** The Customer covenants and warrants the satisfactory condition of plumbing fittings, flue, piping, floor covering, wiring, roofing and related materials. Latent conditions requiring the repair or replacement of existing Customer's property shall be at the Customer's care.

**11.3** Fee/s charged by energy suppliers for approval of the solar system will not be refunded.

## **12. PAYMENT & DEFAULT**

### **12.1 Time for Payment**

Unless otherwise agreed in writing, the Contractor's payment terms are strictly seven (7) days from the date of the Contractor's invoice.

### **12.2 Deposit**

Unless otherwise agreed in writing, the Contractor will require a deposit from the Customer as specified in the Quote and/or Contract. In the event of default as to payment owing to the Contractor on the part of the Customer, the Contractor shall be entitled to forfeit the deposit and claim any profit or margin contemplated by or allowed for in the contract in addition to any remedy available to the Contractor at law or in equity.

### **12.3 Payment Claims**

Where applicable the Contractor shall make a payment claim in accordance with *The Building and Construction Industry Payments Act 2004*. The Customer must respond appropriately and within the time specified in the Act.

### **12.4 Progress Payments**

When agreed progress payments are not honoured by the Customer, the Contractor reserves the right to halt the Services until such time as the outstanding payment is forthcoming. In addition, clauses 12.6, 12.7 and 12.8 may apply.

### **12.5 Administration Fee**

The Contractor reserves the right to charge a monthly fee of twenty-five dollars (\$25) for accounts not paid within the Contractor's agreed payment terms.

### **12.6 Interest**

The Contractor may charge interest at two percent (2%) above the commercial lending rate of the Contractor's bank, calculated on a daily basis on amounts not paid within the Contractor's payment terms.

### **12.7 Damages**

The Customer must pay to the Contractor any costs, expenses or losses incurred by the Contractor as a result of the Customer's failure to pay to the Contractor all sums outstanding as owed by the Customer to the Contractor including without limiting the generality of the forgoing any debt collection and legal costs incurred in enforcing payment on a solicitor and own client basis.

## **13. RETENTION OF TITLE**

### **13.1 Title**

Notwithstanding the delivery of the Goods or their installation, title in any particular Goods shall remain with the Contractor regardless of whether the Goods are on-sold by the Customer until the Customer has paid and discharged any and all monies owing pursuant to any invoice issued by the Contractor for the Goods, including all applicable GST and other taxes, levies and duties. Where the Goods have been on-sold by the Customer, the Customer will be taken to hold the proceeds of sale of such Goods upon trust for the Contractor and to account to the Contractor for these proceeds. Any payment made by or on behalf of the Customer which is later avoided by the application of any Statutory Provisions shall be deemed not to discharge the Contractor's title in the Goods nor the Customer's indebtedness to the Contractor and, in such an event, the parties are to be restored to the rights which each respectively would have had if the payment had not been made.

### **13.2 Bailment**

The Customer acknowledges that it is in possession of the Goods solely as Bailee until payment of all invoices for the Goods is made pursuant to clause 13.1 and until that time the Customer must not encumber or otherwise charge the Goods and the Customer shall be fully responsible for any loss or damage to the Goods whatsoever and howsoever caused following delivery of the Goods.

### **13.3 Repossession**

The Customer hereby irrevocably grants to the Contractor the right, at its sole discretion, to remove or repossess any Goods from the Customer and sell or dispose of them, and the Contractor shall not be liable to the Customer or any person claiming through the Customer and the Contractor shall be entitled to retain the proceeds of any Goods sold and apply same towards the Customer's indebtedness to the Contractor.

If the Customer commits an act of bankruptcy, enters into any form of administration or liquidation, makes any composition or arrangement with its creditors, ceases to carry on business or breaches any fundamental clause of this agreement, then the Contractor may, without prejudice to any other remedies it may have, repossess any Goods delivered to the Customer on any account which has not been paid in accordance with the Terms and Conditions herein and commence proceedings to recover the balance of any monies owing the Contractor by the Customer.

# ELECTRO AVENUE PTY LTD TERMS AND CONDITIONS OF TRADE (Continued)

## 14. PERSONAL PROPERTY SECURITIES ACT (PPSA)

**14.1** In these clauses, the following words have the respective meanings given to them in the PPSA: Financing Statement, Financing Change Statement, Proceeds, Register, Security Agreement, Security Interest and Verification Statement. In these clauses "the Customer" is the grantor and "the Contractor" is the secured party, as defined in the PPSA.

**14.2** The Customer acknowledges and agrees:

- a) that these Terms and Conditions constitute a Security Agreement that creates a Security Interest in all Goods (and Proceeds):
  - (i) previously supplied by the Contractor to the Customer;
  - (ii) to be supplied in the future by the Contractor to the Customer;
- b) that the Security Interest created by these Terms and Conditions is a continuing Security Interest in all Goods (supplied now or in the future by the Contractor to the Customer) and Proceeds, which will operate (despite any intervening payment or settlement of account) until the Contractor has signed a release; and
- c) to waive its rights under section 157 of the PPSA and the following subsections of section 115 of the PPSA, which will not apply to the Security Agreement created by these Terms and Conditions: 95, 118, 121(4), 130, 132(4), 135 and 143.

**14.3** The Customer undertakes to:

- a) keep all Goods free of any charge, lien or Security Interest except as created under these Terms and Conditions and not otherwise deal with the Goods in a way that may prejudice any rights of the Contractor under these Terms and Conditions or the PPSA;
- b) sign any further documents and provide any further information (which must be complete, accurate and up-to-date in all respects) that the Contractor may require to:
  - (i) register a Financing Statement or Financing Change Statement in relation to a Security Interest on the 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 14.3(b) (i) or 14.3(b) (ii);
- c) indemnify, and upon demand reimburse the Contractor for all fees (including actual legal fees on a solicitor/own client basis), costs, disbursements and expenses in:
  - (i) registering and maintaining a Financing Statement or Financing Change Statement on the Register or releasing any Goods charged thereby; and
  - (ii) enforcing or attempting to enforce the Security Interest created by these Terms and Conditions.
- d) not register, or allow to be registered, a Financing Statement or a Financing Change Statement in respect of the Goods, or Proceeds in favour of a third party, without the prior written consent of the Contractor; and
- e) immediately advise the Contractor of any material change in its business details (including, but not limited to, its trading name, street and postal address, email address) or business practices.

## 15. WARRANTY

**15.1** Any warranty as to the Goods on the part of the Customer shall be limited to the warranty provided by the manufacturer to the Customer on installation and full payment of the Goods.

**15.2** The Contractor warrants that the Services will be carried out in accordance with all relevant laws in an appropriate and skilful way, in accordance with plans and specifications (where relevant) using Goods that are good and suitable for the purpose for which they are intended to be used.

**15.3** The Contractor will not be held liable for any damage to the solar power or hot water system caused by fire, flood, storms or other accidents and wildlife.

**15.4** The Contractor reserves the right to make null and void the warranty should the Goods be reinstalled elsewhere, modified, altered, damaged or put to any undue stress other than in the way the Goods were designed to perform.

**15.5** The Contractor does not give any guarantees regarding daily energy production by the solar system. The production will vary for each installation depending on the weather, direction of the roof, shade and other contributing factors.

## 16. LIABILITY

### 16.1 Non-excludable Rights

The parties acknowledge that, under the Australian Consumer Law, certain conditions and warranties may be implied in these Terms and Conditions and there are rights and remedies conferred on the Customer in relation to the provision of the Goods and Services which cannot be excluded, restricted or modified by this agreement ("Non-excludable Rights").

### 16.2 Disclaimer of Liability

The Contractor disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Customer, by

statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-Excludable Rights.

To the extent permitted by law, the liability of the Contractor for a breach of a Non-Excludable Right is limited, at the Contractor's option, to the supplying of the Goods and Services again or payment of the cost of having the Goods and Services supplied again.

### 16.3 Indirect Losses

Notwithstanding any other provision of these Terms and Conditions, the Contractor is in no circumstances (whatever the cause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Customer for:

- a) any increased costs or expenses;
- b) any loss of profit, revenue, business, contracts or anticipated savings;
- c) loss or expense resulting from a claim by a third party; or
- d) any special, indirect or consequential loss or damage of any nature whatsoever caused by any reasonable delay in completing the Services.

### 16.4 Force Majeure

The Contractor will have no liability to the Customer in relation to any loss, damage or expense caused by the Contractor's failure to complete the Services or to deliver the Goods as a result of fire, flood, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, the inability of the Contractor's normal suppliers to supply necessary products or any other matter beyond the Contractor's control.

## 17. PRIVACY

The Customer authorises the Contractor to collect, retain, record, use and disclose commercial and/or consumer information about the Customer, in accordance with the Privacy Act 1988 and the Privacy Principles outlined in the Privacy Amendment Act 2012, to persons and/or legal entities who are a solicitor or any other professional consultant engaged by the Contractor, a debt collector, credit reporting body and/or any other individual or organisation which maintains credit references and/or default listings. This information may be given before, during or after the provision of credit to the Customer.

## 18. ARBITRATION & MEDIATION

Any dispute or difference between the Customer and the Contractor may be notified by a party to the other party and the parties shall firstly meet to negotiate, in good faith, resolution of the dispute and secondly, if negotiation fails to achieve a resolution of the dispute within five (5) working days of the notification of the dispute, attend mediation, administered in accordance with procedures as set out by the Institute of Arbitrators and Mediators Australia, provided that this provision shall not prevent the Contractor from instituting legal action at any time to recover monies owing by the Customer to the Contractor.

## 19. SECURITY AND CHARGE

The Customer hereby charges all property, both equitable and legal, present or future of the Customer in respect of any monies that may be owing by the Customer to the Contractor under these Terms and Conditions or otherwise and hereby authorises the Contractor or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by the Customer at any time.

## 20. GENERAL MATTERS

### 20.1 Non-Waiver

Failure by the Contractor to enforce or delay in enforcing any right or provision of these Terms and Conditions will not constitute a waiver of such right or provision unless acknowledged by the Contractor in writing.

### 20.2 Severability

Any provision in these Terms and Conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms and Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

### 20.3 Governing Law and Jurisdiction

These Terms and Conditions are governed by the laws of the State of Queensland and the laws of the Commonwealth of Australia which are in force in Queensland. All disputes arising between the Customer and the Contractor will be submitted to a court of competent jurisdiction in Queensland selected by the Contractor and such court shall possess territorial jurisdiction to hear and determine such proceedings.

## CUSTOMER AGREEMENT TO THESE TERMS AND CONDITIONS

The person signing this agreement acknowledges that he/she is the person identified as the Customer, or the director or proprietor of the entity that is identified as the Customer.

Signature

Date

Full Name (printed)