



JDZ Electrical Pty Ltd (JDZ)

71 Hotham Street, Casino, NSW 2470 – Ph: 0475 111 165

ABN: 75 610 177 136 ACN: 610 177 136

STANDARD TERMS AND CONDITIONS

These Terms and Conditions will apply to all Products and/or Services provided by JDZ to the Customer and will apply notwithstanding any other terms proposed by the Customer.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Contract:

Confidential Information means the confidential and commercially-sensitive information of the disclosing party including information which (a) is identified by the disclosing party as confidential, (b) relates to the business affairs and practices of the disclosing party (including financial information, business opportunities, business plans, business processes and methodologies), or (c) ought to have been known by the receiving party to be confidential; but does not include information which is in, or comes into, the public domain other by a breach of this Contract by the receiving party, or which is independently known to, or developed by the receiving party as evidenced by the receiving party's written records.

Contract is defined in clause 2.2.

Customer means the entity specified in the Quotation.

Customer Background IP means any Intellectual Property Rights of the Customer's which are in existence at the date of this Contract or which comes into existence after the date of this Contract otherwise than in connection with this Contract.

Defective Services or Products means Products and/or Services which are not in conformity with this Contract.

FOB means 'free on board' in accordance with Incoterms 2010.

Force Majeure means acts of God, riots, civil disturbances, strikes, orders, decisions or measures of governmental authorities of whatever nature or denomination, or any other event which is unpredictable, insurmountable and outside the control of the parties.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any regulations made pursuant to that Act.

Intellectual Property Rights means all copyright and analogous rights (including moral rights), all registered or registrable rights in relation to inventions (including patent rights), trade marks, designs, circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields.

JDZ means JDZ Electrical Pty Ltd ABN 75 610 177 136 or other JDZ entity specified in the Quotation.

JDZ Background IP means any Intellectual Property Rights of JDZ (or licensed to JDZ by a third party) which JDZ makes available, contributes, brings to or uses in connection with this Contract.

Order Acceptance means JDZ's acceptance of the Customer's order for Products and/or Services.

Price means the price specified in the Quotation.

Products mean any goods, materials or items supplied by JDZ as specified in the Quotation.

Project IP means all Intellectual Property Rights created, discovered or coming into existence for the purpose of the performance of this

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Contract. Enhancements, upgrades and changes to JDZ's Background IP created, discovered or coming into existence in performance of this Contract is not Project IP and remains the property of JDZ.

Quotation means the quotation issued by JDZ for the Products and/or Services.

Services mean the services specified in the Quotation.

Site means the Customer's site upon which the Services are to be conducted, as specified in the Quotation.

Specifications mean the Product and/or Service specifications as specified in the Quotation.

Warranty Period means the 12 month period from the date the Products and/or Services are accepted by the Customer.

1.2 In this Contract, unless the context otherwise requires:

- (a) "including" and similar words do not imply any limitation;
- (b) a reference to "\$" or "dollars" is a reference to Australian currency;
- (c) references to any party includes that party's executors, administrators, substitutes, successors and permitted assigns; and
- (d) references to statutes include all statutes amending, consolidating or replacing such statutes.

2. QUOTATION AND CONTRACT

2.1 JDZ reserves the right to, at JDZ's sole discretion, withdraw or amend the Quotation at any time prior to JDZ issuing the Order Acceptance.

2.2 A contract is formed when JDZ issues an Order Acceptance to the Customer, and consists of, in order of precedence, the Order Acceptance, the Quotation and these Terms and Conditions.

3. COOLING OFF PERIOD – CERTEGY EZI-PAY

3.1 If the contract is to be funded by Certegy EZI-Pay you have a right to cancel this agreement within 10 business days from and including the day after you signed or received this agreement.

3.2 Details about your additional rights to cancel this agreement are set out in the information attached to this agreement. For more information see: <https://www.accc.gov.au/publications/sales-practices-a-guide-for-businesses-and-legal-practitioners>

4. DESCRIPTION OF THE PRODUCTS AND SERVICES

4.1 All descriptions and descriptive documents and illustrations given to the Customer by JDZ are a general guide of the Products and Services only, and do not form part of this Contract nor will they be deemed to be a representation, warranty, term or condition of, or relating to, this Contract.

4.2 JDZ reserves the right to amend the Specifications without notice and without affecting the validity of this Contract. The Customer will be notified of the amended Specifications and changes to the Price (if any).

4.3 Any performance figures provided by JDZ are approximates only, unless these figures:

- (a) have been guaranteed in writing and signed by an authorised representative of JDZ; and
- (b) include a margin or tolerance.



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6. PRICE

- 6.1 In consideration for the Products and/or Services, the Customer must pay to JDZ the Price in accordance with this Contract.
- 6.2 Unless expressly stated otherwise, the Price is FOB from JDZ's designated branch and does not include freight, postage, packaging charges and any applicable taxes, levies, duties and tariffs.
- 6.3 If the Customer requests JDZ to deliver the Products, JDZ may charge a fee for delivery.
- 6.4 If JDZ is liable to pay any taxes, levies, duties or tariffs howsoever described, levied by a competent taxing authority, in respect of goods or services properly supplied by JDZ under this Contract, the Customer will pay JDZ the amount for which it is liable.
- 6.5 The Customer authorises JDZ to set-off without notice any amount held by JDZ against any amount owing by the Customer to JDZ.
- 6.6 The parties agree that all amounts payable under this Contract are expressed on a GST exclusive basis. If GST is payable in relation to a Taxable Supply, the amount payable for that Taxable Supply is the amount for that Taxable Supply specified in this Contract plus GST. The parties must provide each other with all documentation required to claim any Input Tax Credit, set off, rebate or refund for or in relation to any GST included in any payment made under this Contract. In this clause 6.6, the terms "GST", "Taxable Supply", "Input Tax Credit" and "Tax Invoice" have the meaning given in the GST Law.

7. INVOICING AND PAYMENT

- 7.1 JDZ reserves the right to supply the Products and/or the Services in parts. The Customer will be invoiced for such part delivery and/or performance in accordance with this Contract.
- 7.2 The Customer agrees to pay JDZ the amount specified in the invoice issued by JDZ without set-off or deduction within 14 days of issue of each invoice or as defined in Quotation.
- 7.3 For non-credit customers, all invoices must be paid in cash or electronically transferred into JDZ's nominated bank account prior to delivery of the Products and/or commencement of performance of the Services.
- 7.4 For approved credit customers, unless otherwise specified in writing, JDZ will invoice as follows:

For standard parts and equipment:

- (a) 30% upon Order Acceptance; and
- (b) 70% upon delivery of the Products and/or commencement of performance of the Services.

For custom parts and equipment:

Please note: Custom parts and equipment will not be accepted for returns.

- (a) 50% upon Order Acceptance; and
- (b) 50% upon delivery of the Products and/or commencement of performance of the Services.

For Services:

- (a) Services will be invoiced monthly, for all services rendered in the preceding month.

For 3rd Party Project Management

- (a) All costs will be passed through to the client for payment.

- (b) JDZ will issue a separated 10% Project Management fee for all good and services being managed.

7.5 If the Customer fails to pay any amount to JDZ when it is due, JDZ in addition to any other rights it may have, is entitled to:

- (a) suspend further deliveries of the Products and/or Services; or terminate this Contract in relation to Products which have not been delivered or Services that have not been performed and JDZ will be entitled to payment for Products already delivered and Products in the course of manufacture and/or for Services already performed; and/or
- (b) charge interest at 3% per annum over JDZ's nominated bank's overdraft lending rate.

8. DELIVERY

- 8.1 JDZ will endeavor to provide 14 days notice to the Customer that the Products are ready for dispatch from JDZ's designated branch.
- 8.2 If requested by the Customer and provided for in this Contract, JDZ will deliver the Products and/or Services in accordance with the delivery terms specified in this Contract. All delivery dates referred to in this Contract are JDZ's best estimate and may be subject to change. JDZ is not liable to the Customer in respect of any delay or non-delivery of the Products and/or provision of the Services however caused.
- 8.3 If the Customer is unable to accept delivery within 14 days of receiving notice from JDZ that the Products are ready for dispatch, or JDZ is prevented from making delivery due to causes beyond JDZ's reasonable control, then upon the expiry of the 14 day notice period:
- (a) to the extent permitted by law, the Products will be deemed to have been accepted by the Customer;
 - (b) payment will be due and payable by the Customer; and
 - (c) JDZ will store the Products at any available location at the Customer's risk.

8.4 JDZ must be advised in writing of all shortages in quantity delivered and any breakage or loss within 3 days of receipt of the Products.

9. TITLE AND RISK

- 9.1 Title in the Products passes to the Customer upon the date that is the later of:
- (a) JDZ's receipt of payment in full for those Products; or
 - (b) the date the Products are delivered to the Customer's Site or dispatched from JDZ's designated location.

9.2 The Customer acknowledges and agrees that, in relation to Products supplied to the Customer under credit terms, JDZ is entitled to register its interest against the Customer under any applicable security legislation to retain title in the Products until paid in full. The Customer agrees to indemnify JDZ in relation to all costs associated with registering such interest.

9.3 The risk in the Products will pass to the Customer on dispatch or delivery in accordance with this clause.

10. ON SITE SERVICES

The Customer must:

- (a) nominate a representative capable of making decisions and providing instructions, including the relevant requirements for the Services to be performed;



- (b) allow JDZ's personnel access to the Site and ensure that that portion of the Site where the Services are being performed is left secure, clean, orderly and fit for immediate use;
- (c) provide adequate power, water and other utilities; and
- (d) inform JDZ of any special safety and Site regulations and particular sources of danger that JDZ may encounter at the Site.

11. ACCEPTANCE OF PRODUCTS/SERVICES

- 11.1 Products will be deemed to be accepted by the Customer upon delivery or pursuant to clause 8.3(a).
- 11.2 Acceptance will be deemed to have occurred 14 days after completion of the Services, unless agreed otherwise.
- 11.3 If upon inspection or testing, the Customer finds any of the Services and/or Products to be Defective Services or Products, it may within 14 days after completion of the Services or acceptance of the Products and acting reasonably:
 - (a) reject the Defective Services or Products by notifying JDZ in writing with reasons for rejection and/or
 - (b) request JDZ to make good the Defective Services or Products at no additional charge to the Customer.

12. WARRANTIES

- 12.1 The Customer acknowledges that it has satisfied itself that the Products and/or Services are suitable for the Customer's purpose and acknowledges that it has not relied upon any warranty or representation from JDZ in this regard.
- 12.2 In entering into this Contract, the Customer warrants:
 - (a) it has obtained all necessary approvals for the acceptance of the Products and/or Services;
 - (b) it has complied with every applicable legal or regulatory requirement of any government or other relevant authority in the Customers place of business concerning or relating to this Contract; and
 - (c) that all necessary licences or permits required in connection with this Contract have been lawfully obtained.
- 12.3 Except as set out expressly in this Contract and to the extent permitted by law, JDZ does not give and is not bound by or subject to any condition, term, warranty, representation or obligation in connection with this Contract whether such condition, term, warranty, representation or obligation is implied by virtue of any statute, law, custom, trade usage or otherwise.
- 12.4 For Products manufactured solely by JDZ, JDZ warrants that the Products will be of an acceptable quality.
- 12.5 JDZ will perform the Services with due care and skill.
- 12.6 The warranties provided under this clause will not be honoured where:
 - (a) any failure to conform is not notified to JDZ in writing within 14 days following supply of the Products or completion of the Services;
 - (b) the defect in material or fault in manufacture of the Products is not notified to JDZ in writing within the Warranty Period;
 - (c) the Products are used, other than for the purpose stated in this Contract;
 - (d) the Products are altered or modified without JDZ's prior approval;

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- (e) the Products are serviced other than by JDZ authorised personnel; and
 - (f) the claim relates to items that are a consumable item by their nature including batteries, fuel, seals and screws.
- 12.7 These warranties are in addition to other rights and remedies that are available to the Customer at law. Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- #### 13. Repairs
- 13.1 The Customer must accompany all Product returns with a completed 'Return Material Authorisation Form', available from JDZ upon request.
 - 13.2 For claims within the Warranty Period, JDZ will, at JDZ's sole discretion:
 - (a) replace, repair or resupply the Products; or
 - (b) pay the cost of replacing, repairing or resupplying the Products.
 - 13.3 For Product repair requests outside the Warranty Period, JDZ will provide a Quotation to repair or replace the Product (as applicable) upon receipt of the Return Material Authorisation Form.
 - 13.4 The cost associated with delivering the Products to and from JDZ will be the responsibility of:
 - (a) JDZ if the Product is returned during the Warranty Period; or
 - (b) Customer if the Product is returned outside the Warranty Period.
- #### 14. LIABILITY AND INDEMNITY
- 14.1 Notwithstanding any other clause of this Contract, to the extent permitted by law, JDZ's aggregate liability in connection with this Contract:
 - (a) is limited at JDZ's option to one of the following:
 - (i) in the case of the supply of Products: (A) replacement, repair or resupply of the Products; or (B) the cost of replacing, repairing or resupplying the Products;
 - (ii) in the case of the supply of Services: (A) resupplying the Services; or (B) the cost of resupplying the Services;
 - (b) but will not exceed the Price of this Contract and the Customer shall to the fullest extent permitted by law save, indemnify, defend and hold harmless JDZ from any claim or liability exceeding this amount, regardless of cause.
 - 14.2 JDZ is not responsible to the Customer or any other party for any loss of revenue and profit, loss of anticipated revenue and profit, loss of business opportunity, loss of reputation, loss or goodwill, direct, indirect, consequential or inconsequential injury, loss or damage whatsoever by reason of any delay in delivery, deterioration, deficiency or other fault or harm in the Products and/or Services supplied by or on behalf of or in any arrangement with JDZ and whether or not due to the negligence of JDZ, its servants or agents.
 - 14.3 The Customer saves, indemnifies, defends and holds harmless JDZ against all claims, losses, liabilities, legal costs (on a full indemnity basis) and other costs and expenses incurred by JDZ arising directly or indirectly as a result of or in connection with:



- (a) a breach or non-performance of any of the obligations or warranties of the Customer under this Contract whether express or implied; or
- (b) any personal injury or death to any person or damage to property caused or contributed to by the performance of this Contract by JDZ and/or the entry onto, and the activities undertaken on and in, the Site by JDZ.

14.4 To the extent permitted by law, the rights and remedies in this Contract are the sole and exclusive rights and remedies available to the Customer in connection with this Contract and the supply or failure to supply the Products and/or Services.

15. INTELLECTUAL PROPERTY

- 15.1 The Customer acknowledges that JDZ remains the owner of all JDZ Background IP.
- 15.2 JDZ grants the Customer a non-exclusive, irrevocable, royalty free licence to use all JDZ Background IP to the extent necessary to enable the Customer to exercise rights in the Project IP.
- 15.3 JDZ acknowledges that the Customer remains the owner of all Customer Background IP.
- 15.4 The Customer grants JDZ a non-exclusive, irrevocable, royalty free licence to use all Customer Background IP to the extent necessary to enable JDZ to carry out its obligations under this Contract and for the term of this Contract.
- 15.5 Upon full payment of the Price, all rights in any Project IP shall be vested in the Customer and the Customer grants JDZ a non-exclusive, irrevocable, royalty free licence to use the Project IP for the purpose of fulfilling its contractual obligations under this Contract.
- 15.6 JDZ will procure all licences and consents to use any Intellectual Property Rights of a third party which are necessary to provide the Services.
- 15.7 The Customer must not make available to third parties, modify, copy or duplicate, on-sell, decompile, disassemble or reverse engineer and/or manufacture products or components which in substance are the same or similar to, the Product and/or JDZ Background IP.
- 15.8 The Customer must not alter or remove any copyright statement or other notice of ownership of intellectual property rights which accompanies the Product and/or JDZ Background IP.

16. PRIVACY AND CONFIDENTIALITY

- 16.1 Subject to any applicable privacy legislation, JDZ may give a credit-reporting agency personal information of a Customer contained in a credit application.
- 16.2 The Customer consents to and authorises JDZ to:
- (a) obtain information about the Customer's credit worthiness from its bank or any trade reference and/or any other credit provider and or credit reporting agency; and
 - (b) give a credit reporting agency information about the Customer's credit.
- 16.3 Each party will otherwise keep the Confidential Information it receives under this Contract confidential and in the strictest of confidence.

17. TERMINATION

- 17.1 JDZ may terminate this Contract:
- (a) immediately on written notice if the Customer is in default of this Contract and the default is not remedied within 14 days of receiving written notice to remedy the default;

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- (b) immediately on written notice if the Customer becomes bankrupt, is ordered to wind up, passes into liquidation or administration or has a receiver, manager or administrator appointed; or
- (c) for any reason in its absolute discretion upon giving 14 days written notice to the Customer.

17.2 Upon termination of this Contract in accordance with clauses 17.1(a) and 17.1(b), the Customer must pay JDZ all amounts owing to JDZ up to the date of termination of this Contract, including reasonable costs incurred by JDZ as a result of the termination of this Contract (including third party cancellation fees and administrative costs).

17.3 The Customer may only terminate this Contract or cancel all or part of an order with the written consent of JDZ.

17.4 If this Contract is terminated or an order is cancelled before commencement of the supply of Products and/or Services, the Customer must pay to JDZ all costs incurred by JDZ arising from the cancellation including any third party costs incurred by JDZ relating to this Contract.

17.5 If this Contract is terminated or an order is cancelled after commencement of the supply of Products and/or Services, the Customer must pay to JDZ the Price unless otherwise agreed by JDZ in writing.

18. FORCE MAJEURE

- 18.1 If JDZ is prevented or hindered or delayed in performing its duties under this Contract as a direct result of a Force Majeure, such non-performance shall not be considered a breach of this Contract for the duration of the Force Majeure. In the case of Force Majeure, the parties shall use their best efforts to remedy the situation to the extent possible.
- 18.2 JDZ will be entitled to deliver, and the Customer must take and pay for such part of the Products and/or Services as can be delivered, while the Force Majeure event exists.

19. GOVERNING LAW AND JURISDICTION

This Contract is governed and construed by the laws of New South Wales, Australia. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Contract. The parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

20. GENERAL

- 20.1 The Customer must not assign its rights, duties and obligations under this Contract without JDZ's prior written consent. JDZ may subcontract the performance of any part of the Services to any third party or assign this Contract or any of JDZ's rights or obligations under this Contract.
- 20.2 This Contract contains the entire understanding between the parties concerning the subject matter of this Contract and supersedes all prior communications.
- 20.3 The failure of either party to enforce any provisions under this Contract will not waive the right of such party thereafter to enforce any such provisions.
- 20.4 All notices and consents relating to this Contract must be in writing. Except as specified otherwise, this Contract cannot be amended or varied except in writing and signed by the parties.
- 20.5 If any term or provision of this Contract is held by a court to be illegal, invalid or unenforceable under the applicable law, that term or provision will be severed from this Contract and the remaining terms and conditions will be unaffected.