

These Terms and Conditions ("Terms") apply to all contracts and dealings between THM Electrical Pty Ltd (ACN605 920 214) ("THM Electrical") in relation to any goods ("Goods") or services ("Services") provided to any client ("Client").

1. **Quotations.** Any written quotation from THM Electrical to the Client ("Quotation") is subject to these Terms and is open for acceptance by the Client within thirty days of its date if a date is not stated in the Quotation.
2. **Mistake.** THM Electrical reserves the right to correct mistakes in any Quotation by giving written notice to the Client. The Client is deemed to accept the corrected Quotation unless it gives written notice to THM Electrical within two days.
3. **Exclusions and Conditions.** All Quotations:
 - (a) are based on the delivery and/or installation of Goods during the hours of 7:00am and 5:00pm Monday to Friday and specifically exclusive of public holidays;
 - (b) exclude any additional Goods and Services and ancillary or special conditions unless expressly included in the Quotation and any additional Goods and Services required will constitute a Variation under these Terms.
4. **Acceptance.** The Client is deemed to accept the Quotation by issuing a purchase order, by making full payment or part payment of the Price, by issuing instructions in relation to the supply, or by communicating verbal or written agreement to the Quotation.
5. **Deposit.** THM Electrical may, in its sole discretion require the Client to pay a non-refundable deposit and may refuse to commence provision of Goods and Services until receipt of the Deposit.
6. **Goods and Services.** The Client is solely responsible to determine the suitability of Goods and Services for a particular purpose or application. THM Electrical may update, modify and make minor alterations to components of Goods and Services supplied, provided the Goods and Services are not materially different from those ordered. The Client must only use Goods in accordance with applicable laws, regulations and standards and in accordance with all installation guidelines and manuals and proper commercial practice.
7. **Drawings and Specifications.** All specifications, drawings and particulars submitted by THM Electrical are approximate only and any deviation does not vitiate any contract with THM Electrical or form grounds for any claim against THM Electrical. Where THM Electrical has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of THM Electrical.
8. **Price.** The Client will pay the price for Goods and Services set out in the Quotation ("Price") subject to notified Variations and minor changes from the Quotation Price of up to 10% for changes in costs of labour and materials.
9. **Payment.** The Client must pay the Price at the times specified in the Quotation, or as determined by THM Electrical where the Quotation does not specify payment dates which may be before Delivery or on Delivery or on the date specified in any invoice issued by THM Electrical and subject to the following conditions:
 - (a) The Price is not deemed to be paid until cleared funds are received by THM Electrical.
 - (b) Unless agreed in writing with the Client, there will be no retention by the Client of any part of the Price.
 - (c) All payments are to be made without deduction or set-off, whether legal or equitable.
 - (d) Any error on an invoice supplied to the Client by THM Electrical must be communicated in writing to THM Electrical within fourteen days of the invoice date. Until corrected, the full amount of the invoice shall remain as the amount owed by the Client to THM Electrical.
 - (e) GST is payable by the Client in addition to the Price.
10. **Variation.** THM Electrical reserves the right to change the Price by notice to the Client:
 - (a) if the Client requests a change to Goods or Services or
 - (b) if the Client requests additional Goods and Services not included in the Quotation, or
 - (c) where unforeseen circumstances arise which increase the cost of Goods or Services, (each, a "Variation"). Each Variation will be calculated on a unit rate basis set out in the Quotation or, where the Quotation is silent, according to the reasonable market value of the Goods and/or Services as notified by THM Electrical.
11. **Risk and Title.** Risk in relation to Goods and Services passes to the Client on Delivery under these Terms. THM Electrical retains full title and ownership of Goods after Delivery and before payment and title shall not pass to the Client until full payment of the Price is received by THM Electrical. Until title passes to the Client:
 - (a) the Client is only a bailee of the Goods and must return the Goods to THM Electrical on request;
 - (b) the Client irrevocably authorises THM Electrical to enter the Client's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and recover possession of the Goods; and
 - (c) the Client shall sell, transfer or grant any security over the Goods.
12. **Insurance.** The Client must insure Goods as at Delivery. If any of the Goods are lost, damaged or destroyed following delivery but prior to title passing to the Client, the Client will pay to THM Electrical all insurance proceeds payable for the Goods on demand.
13. **Long-lead Goods.** THM Electrical will charge and the Client will pay for long-lead Goods on notification by THM Electrical of delivery to THM Electrical of the Goods.
14. **Storage.** THM Electrical reserves the right to make a reasonable charge to the Client for the storage of Goods if delivery instructions are not provided by the Client or the Client fails to collect the Goods within fourteen days of a request by THM Electrical for the same. THM Electrical may charge for storage from the first day after THM Electrical requests the Client to provide delivery instructions or collect the Goods.
15. **Work Site.** The Client shall ensure that the location for delivery of Goods and Services ("Work Site") is safe and clear of hazards. Any delay or obstructions at the Work Site that are outside the control of THM Electrical shall give rise to a Variation. THM Electrical shall not be liable for any loss or damage caused in accessing the Work Site including, but not limited to, damage to walls, flooring and ceiling. If Goods are unable to be installed by THM Electrical at the time of Delivery, the Client shall provide a locked and well secured area at the Work Site suitable for the storage of the particular Goods at no cost to Electrical.
16. **Delivery.** Any delivery times notified by THM Electrical are estimates only, and THM Electrical is not liable for loss, damage or delay arising from the late delivery or non-delivery or late installation or non-installation of the Goods and/or Services. THM Electrical may provide Goods and Services by instalments. If the Client requests THM Electrical to leave Goods outside the Client's premises for collection or to deliver Goods to an unattended location then such Goods shall be left at the Client's sole risk.
17. **Shortage and Defect.** The Client will inspect the Goods and Services upon receipt and notify THM Electrical of any defects or shortages within seven days from the date of Delivery of the Goods and/or Services or within seven days of the date that defect becomes evident. The Client waives any claim against THM Electrical for defects in, or shortage of any Goods and/or Services if it has not made a claim within seven days. Upon such notification, the Client must allow THM Electrical to inspect the Goods.
18. **Practical Completion.** In the event that Goods are to be installed by THM Electrical at the Work Site and in the event that the Client seeks to use any part or portion of the Goods prior to completion of the installation, the Client must issue THM Electrical with a certificate of practical completion for the part or portion and the defect liability period for that part or portion shall commence from that date.
19. **Return Goods.** THM Electrical is not under any duty to accept Goods returned by the Client and will do so only on terms to be agreed in writing in each individual case. If THM Electrical agrees to accept returned Goods from the Client, the Client must return the Goods to THM Electrical's selected location at its cost and THM Electrical may charge a restocking fee of up to 20% of the Price of the returned Goods.

20. **Repossession.** Upon default in payment of the Price by the Client, THM Electrical may retake possession of Goods. All costs of such repossession of Goods by THM Electrical will be payable by the Client. Such rights shall be without prejudice to THM Electrical's right to claim damages from the Client for breach of contract or any other right that accrues to THM Electrical.
21. **Liability.** THM Electrical excludes all warranties and liabilities in relation to the Goods and Services except those implied by law or as set out in this clause or provided in writing by THM Electrical. To the extent that liability is not excluded, THM Electrical's liability for Goods and Services is limited to:
- in the case of Goods, the replacement of the Goods, supply of equivalent Goods, repair of the Goods, payment of the cost of replacing the Goods or acquiring equivalent Goods or the payment of the cost of having the Goods repaired at the option of; or
 - in the case of Services, the supplying of Services again or the payment of the cost of having the Services supplied again, provided that in all circumstances, THM Electrical's total liability shall never exceed the Price for any Goods or Services.
22. **Exclusion.** THM Electrical shall not be liable for any defect or damage to Goods or to any claim which may be caused or partly caused by or arise as a result of:
- the Client failing to properly maintain or store the Goods;
 - the Client using the Goods for any purpose other than for which they were designed;
 - the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonable prudent operator or user;
 - the Client failing to follow any instructions or guidelines provided by THM Electrical; or
 - fair wear and tear, any accident or act of God.
23. **Performance.** Any performance figures given by THM Electrical are estimates only. THM Electrical is under no liability for damages for failure of the Goods to attain such performance unless specifically guaranteed in writing. Any such written guarantees are subject to the recognised tolerances applicable to such figures.
24. **THM Electrical Cancellation.** THM Electrical may at its sole discretion cancel delivery of Goods and/or Services at any time before they are received by the Client by giving reasonable prior written notice to the Client and upon giving such notice shall not be liable for any loss or damage arising whatsoever from such cancellation.
25. **Client Cancellation.** In the event that the Client cancels delivery of Goods and/or Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by THM Electrical as a result of the cancellation, including, but not limited to, any loss of profits. Cancellation of orders for Goods made to the Client's specifications or for non-stock list items, will not be accepted once the order has been placed.
26. **Default.** Where the Client defaults in payment of the Price or any other obligation under these Terms:
- Interest of 7% per annum calculated daily will accrue from the date upon which the amount is payable in accordance with these terms until the date upon which the Price and all accrued interest is received as cleared funds by THM Electrical;
 - The Client is liable for all costs and disbursements incurred by THM Electrical and/or its agents in enforcement of these Terms (including but not limited to internal administration fees, legal costs on an indemnity basis, collection agency costs and bank dishonour fees);
 - THM Electrical may suspend or terminate the supply of Goods and/or Services to the Client without notice without liability to the Client for any loss or damage the Client suffers; and
 - the total Price for Goods and Services, whether or not due for payment, will be immediately payable.
27. **Termination.** If any money payable to THM Electrical becomes overdue, or in THM Electrical's opinion the Client will be unable to make a payment when it falls due or 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 a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client, then THM Electrical can terminate all agreements with the Client and the Client will be liable for all loss, damages costs and expenses incurred by THM Electrical.
28. **Force Majeure.** If THM Electrical is prevented or delayed from provision of Goods and Services because of any event or circumstances beyond the control of THM Electrical, it must give notice of that event and all obligations of THM Electrical will be suspended for the duration of that event.
29. **Security for Payment.** The Client grants THM Electrical the following security interests as collateral for its performance of its payment obligations for Goods and for Services under these Terms
- The Client hereby charges all presently owned and future acquired real property of the Client and the Client agrees immediately upon being required by THM Electrical to enter into a mortgage to be prepared by THM Electrical's solicitors on the terms and conditions as THM Electrical's solicitor shall think fit to secure any sum due hereunder and the Client further agrees and permits and authorises the supplier to register an absolute caveat over any land now owned by the Client or in the future acquired by the Client to secure any sum due hereunder at any time from the Client to THM Electrical;
 - The Client hereby charges all present and after-acquired personal property as security which includes all proceeds of the sale or divestment of any present or after-acquired Goods or personal property and the security interest granted pursuant to this clause extends to all rights in relation to accounts of the Client's debtors; and
 - The Client will do all such things and provide all such documents as reasonably directed by THM Electrical to enable THM Electrical to obtain the full benefit of the securities granted in these provisions.
30. **Director Guarantee.** Where the Client is a corporation, each of the directors jointly and severally guarantees the payment by the Client of all outstanding amounts in relation to Goods sold or hired by THM Electrical.
31. **Miscellaneous.**
- Client Warrantee:** The Client warrants that it has the power to enter into an agreement on these Terms and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that these Terms creates binding and valid legal obligations on it.
 - Entire Agreement:** These Terms, together with the Quotation constitute the entire agreement between the parties with respect to the subject matter. If the Quotation and these Terms are inconsistent with any other document or agreement between the parties, these Terms prevail to the extent of the inconsistency. All price lists, catalogues and advertising material are expressly excluded from application.
 - Waiver:** Any waiver of any provision of these Terms by any of the parties shall only be effective in the specific instance and for the purpose for which it was given, even if the terms of any waiver are not so limited. No default or delay on the part of either party in exercising any rights, powers or privileges shall operate as a waiver of them or of any other right nor shall a single or partial exercise or exercise of any other rights, power or privilege.
 - Enforceability:** Any provision of, or the application of any provision of, these Terms which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition. Any provision of, or the application of any provision of, these Terms which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.
 - PPSA:** The Client consents to THM Electrical perfecting any security interest which arises by the operation of the *Personal Property Securities Act 2009* ("PPSA"), and agrees to do anything reasonably required by THM Electrical to enable it to do so. THM Electrical contracts out of each provision of the PPSA that it is permitted to contract out of under s115(1) of the PPSA. The Client waives its rights to receive all notices under the PPSA that are permitted to be waived under s157(3) of the PPSA. At the request of THM Electrical, the Client will procure and register a security interest under the PPSA against the Client's clients in respect of any Goods sold to that client that is subject to a retention of title by THM Electrical.
 - Jurisdiction:** The laws of the State of Western Australia apply to these Terms and Conditions and all contracts between THM Electrical and the Client, and unless varied by mutual consent all contracts shall be subject to the jurisdiction of any of the Courts of Western Australia.
 - Severance:** The parties agree that the provisions of these Terms and Conditions are reasonable in all the circumstances and that each provision is, and will be deemed, to be severable and independent. Further, if all or any part of any provision is judged invalid or unenforceable the removal of that provision or part will not affect the validity or enforceability of the remaining provisions.
 - Amendment:** These Terms and Conditions can only be amended or replaced by another document executed by the Parties.
 - Assignment:** THM Electrical has the right to assign to a third party any obligations that it has to the Client in relation to the supply of Goods and/or Services.