

Marelex Electrical Terms and Conditions of Sale of Goods

Acknowledgement of Standing Terms & Conditions

This section should be completed and signed by the Customer, or the Customer's authorised agent.

By signing these Terms and Conditions the Customer agrees that these standing Terms and Conditions apply on a continuing basis to the purchase of all and any Goods by the Customer from the Seller, unless otherwise notified in writing by the Seller. The Customer acknowledges having read and understood these Terms & Conditions and agrees to abide by the Terms and Conditions of Sale of Goods as set out below:

Name of Customer:

Company Name:

Company ACN/ABN.....

Signature of Customers authorised agent

.....

Name & position of authorised agent

.....

Date:

As a duly Authorised Signatory for & on behalf of the Customer.

1. Definitions

1.1 In these terms and conditions:

- (1) **Customer** means the entity purchasing the Goods upon these terms and conditions.
- (2) **Goods** means stores and materials purchased through Marelex Electrical.
- (3) **Seller** means Marelex Electrical.
- (4) **Warehouse** means Marelex Electrical's workshop South Lismore.

2. Binding terms and conditions

2.1 The only terms which are binding upon the Seller are:

- (1) those set out in these terms and conditions or otherwise agreed to in writing by the Seller; and
- (2) those, if any, which are imposed by law and which cannot be excluded.

3. Trading Terms

3.1 The Customer agrees to a credit check being conducted and a credit limit approved. The Seller will advise the Customer in writing of the amount of the approved credit limit. The Customer must return the formal acknowledgement of their approved credit limit.

3.2 The Customer agrees not to exceed their approved credit limit. The approved credit limit amount is inclusive of GST, sundry network charges, (eg monopoly fees) and approved sales orders which have not been invoiced.

3.3 Where a Customer has been placed in cash only terms, all monies must be paid prior to the order being placed by the Customer.

4. Quotations, Orders and Pricing

4.1 Status of quotations

A price quoted by the Seller is not an offer to sell but is an invitation to treat only and the Seller reserves the right to accept or reject in its absolute discretion any orders which may be received by it.

4.2 Formation of Contract

Each order is an offer by the Customer to acquire the Goods on these Terms and Conditions. A contract is made when the Seller accepts a Customers order.

4.3 Price Variation

- (1) If for any reason beyond the control of the Seller, costs of material, labour, storage and delivery of the goods and any ancillary costs thereto shall rise or fall, the Seller reserves the right to vary the price of the Goods ordered.
- (2) Where a price list is shown, the prices shown are subject to variation without notice.

5. Deposits

The seller may in its absolute discretion require the payment of a deposit for:

- (1) all orders;

6. Cancellation

The following types of orders of Goods cannot be cancelled by the Customer after acceptance of the order by the Seller, variations will cost extra:

- (1) non-standard orders;
- (2) special orders; and
- (3) orders of Goods for direct delivery to the Customer from the manufacturer/supplier.

7. Goods and services tax

7.1 Unless GST is expressly included, the consideration expressed to be payable under any other clause of these Terms and Conditions for any supply made under or in connection with these Terms and Conditions does not include GST.

7.2 To the extent that any supply made under or in connection with these Terms and Conditions is a taxable supply, the GST exclusive consideration otherwise payable for that supply is increased by an amount equal to the GST imposed in respect of the supply, and subject to the receipt of a valid tax invoice is payable at the same time.

8. Electronic Transactions

8.1 The Customer acknowledges that any communication necessary or appropriate for the processing of orders and for the formation of a Contract between the Seller and the Customer may be undertaken by an electronic communication (as defined in the *Electronic Transactions Act (NSW)* and the Customer:

- (1) consents to giving information by electronic communication as provided for under Section 8 of the *Electronic Transactions Act*;
- (2) agrees and acknowledges that where any signature is required to an electronic communication and the applicable security requirements have been met, the signature is valid as provided for in Section 9 of the *Electronic Transactions Act*;
- (3) agrees and acknowledges that where a document is produced by electronic communication, it is valid as provided for in Section 10 of the *Electronic Transactions Act*; and

9. Supply and Delivery

9.1 Collection of Goods from Warehouses

Unless otherwise specified in writing, collection of the Goods is from the Seller's Warehouse, and the Customer must pay for the cost of transportation of the Goods. The Customer, or Customer's agent, must sign a copy of the packaging slip as proof of collection.

9.2 Goods must be collected within 30 days

Where either:

- (1) Goods are to be collected by the Customer from a Warehouse; or
- (2) no freight details are supplied by the Customer to the Seller;

the Goods must be collected by the Customer within 30 days of the date of invoice. If the Goods are not collected within 30 days of the date of invoice, a daily storage charge of 0.5% of the purchase price of the Goods will apply to the Seller's storage of the Goods on behalf of the Customer.

9.3 Delivery

Where the Seller agrees to arrange for delivery at the Customer's request, all risk, responsibility and costs associated with the delivery remain with the Customer and the Customers nominated freight/delivery company.

Where the Customer requires delivery of Goods, the Customer must:

- (1) nominate the freight/delivery company that it wishes to undertake the delivery;
- (2) advise the Seller of the Customer's account number for the freight/delivery company; and
- (3) advise the Seller of the address the Customer requires the Goods to be delivered to. Unless otherwise specified in writing by the Seller, the Seller will not accept delivery of the Goods on behalf of the Customer. The Customer must nominate a delivery address of their own.

9.4 Supply and Delivery date

If a supply or delivery date is specified that date is an estimate only and the Seller is not liable for any delay in supply or delivery.

9.5 Partial supply

If the Seller is unable to supply the Customer's total order these Terms and Conditions continue to apply to the Goods supplied.

10. Acceptance of Goods generally

10.1 The Customer must inspect the Goods immediately upon delivery/collection and must within 7 days after the date of inspection give written notice to the Seller, with particulars of any claim. If the Customer fails to give that notice, then to the extent permitted by statute the Goods must be treated as having been accepted by the Customer and the Customer must pay for the Goods in accordance with the provisions of these terms and conditions.

11. Acceptance of switchboards, control panels upon collection/delivery

11.1 Acceptance of switchboards, control panels

Due to the fragile nature of switchboards and control equipment, the Customer, Customers agent, or the Customers nominated freight/delivery company must immediately upon collection inspect the condition of any switchboards and control equipment, being collected. At this time the Customer, Customer's agent or the Customers nominated freight/delivery company must either:

- (1) sign an acceptance form testifying to the good condition of the switchboards and control equipment; or
- (2) inform the Seller of any defects with the switchboards and control equipment.

If the Seller is not informed upon collection of the switchboards and control equipment, of any defects, then:

- (3) the Customer must pay for the Goods in accordance with the provisions of these Terms and Conditions; and
- (4) the Seller will not accept the return of any damaged Goods.

This clause 11.1 does not limit the application of clause 11.2.

11.2 Collection by delivery/freight company

Due to the risk of damage during delivery by the Customers nominated freight/delivery company, the Customer acknowledges:

- (1) in accordance with clause 14, all risk and liability for damage to switchboards and control equipment, remains at all times with the Customer, and the Customer's nominated freight/delivery company;
- (2) the Customer must pay for the Goods in accordance with the provisions of these Terms and Conditions; and
- (3) the Seller will not accept the return of a damaged switchboards and control equipment.

12. Payment

12.1 Payment terms

Full payment for Goods must be made before delivery or collection unless the customer has an approved credit facility in which case payment must be made — within 30 days from invoice date, or as otherwise specified in writing by the Seller.

12.2 Timing of payment

Payment for Goods purchased under these Terms and Conditions must be treated as made:

- (1) if cash is tendered – on the date it is tendered;
- (2) if by means of electronic transfer – on the date the money is credited to the bank account nominated by the Seller; and

if a cheque (bank or otherwise) or other negotiable instrument is tendered – on the date upon which the cheque or other negotiable instrument is negotiated and cleared by the Seller's bankers.

Time of the essence

Time is of the essence in respect of the Customer's obligation to pay for Goods under these Terms and Conditions.

12.3 Sanctions for late payment

If the Customer defaults in paying the Seller in accordance with these Terms and Conditions the Seller may in its absolute discretion:

- (1) charge the Customer interest on overdue amounts at the maximum overdraft rate charged by the Seller's bankers which is not less than 2% per month, applied on a daily basis, from the due date until full payment of all outstanding monies is made, or until judgement, as the case may be; and
- (2) require the Customer to reimburse the Seller for all collection costs including legal costs incurred by the Seller calculated on a solicitor and client basis as a consequence of the Seller instructing its solicitor to provide advice to it in connection with the default and/or to institute such recovery process as the Seller in its discretion decides.

12.4 Application of payments

Any payments tendered by the Customer to the Seller for Goods purchased in accordance with these Terms and Conditions must be applied as follows:

- (1) first as reimbursement for any collection costs incurred by the Seller in accordance with clause 12.3(2);
- (2) secondly, in payment of any interest charged to the Customer in accordance with clause 12.3(1); and
- (3) thirdly, in satisfaction or part satisfaction of the oldest portion of the Customer's account for the purchase of Goods.

13. Returns

13.1 Terms applying to all returns

The Customer must not return any Goods (whether or not the Goods are treated as accepted by the Customer) unless the Seller has first given a Return Goods Authorisation to their return. The Customer must pay freight and cartage for the return of Goods (except where the Goods are returned in accordance with clause 13.6).

13.2 Goods not to be returned

The Seller will not approve the return of Goods including in, but not limited to, the following circumstances:

- (1) where the Goods are a special order;
- (2) where the Goods are a non-franchise item;
- (3) where the Customer has incorrectly ordered the wrong Goods;
- (4) where the Customer has accepted the Goods in accordance with clause 11.1 or 11.2.

13.3 Return Goods Authorisation

Prior to returning Goods, the Customer must

- (1) provide the Seller with the invoice number, date and reason for return; and
- (2) obtain a Return Goods Authorisation number from the External Sales Team.

13.4 Returns where Goods accepted

If the Seller has given a Return Goods Authorisation to the return of Goods treated as accepted under clause 10.1:

- (1) the Seller will only give credit for the Goods returned if they are in the same condition as when supplied and confirmed by the Quality and Receiving Officer;

- (2) the Goods must be returned within 30 days of the invoice date; and
- (3) the Seller may charge a handling charge equivalent to 15% of the price of the Goods returned, unless the Customer is a "consumer" for the purposes of the *Competition and Consumer Act 2010 (Cth)* or similar State or Territory legislation.

13.5 Returns where Goods not accepted

If the Seller has given a Return Goods Authorisation to the return of Goods which are not treated as accepted by the Customer under clause 10.1 the Customer must return the Goods to the Seller within 14 days of receiving them.

13.6 Failure, defect or supply of incorrect Goods

The Seller will not accept responsibility for, or reimburse any costs associated with the failure, defect or supply of incorrect Goods, other than:

- (1) the costs of freight in returning the Goods; and
- (2) the cost of the correct replacement item, to the value of the item the Customer has paid for. If the replacement item is more expensive than the initial item the Customer was charged for, the Customer must pay the difference in the price of the replacement item.

13.7 Incorrect installation

The Seller does not accept any liability for the incorrect installation of Goods including switchboards and control equipment,.

14. Risk and insurance

14.1 Goods are at the Customer's risk immediately upon order of the Goods by the Customer. The Customer must insure the Goods at the Customer's cost from the time of collection of the Goods by the Customer or the Customer's nominated freight/delivery company, until they are paid for in full against such risks as it thinks appropriate and must note the interest of the Seller on the policy and produce a certificate to this effect to the Seller on request.

15. Retention of title

15.1 When property passes

Property in the Goods supplied by the Seller to the Customer under these Terms and Conditions does not pass to the Customer until the money owing for those Goods and any other money relating to the supply or delivery of those Goods has been paid. The Customer in the meantime takes custody of the Goods and retains them as the fiduciary agent and bailee of the Seller.

15.2 Allocation of payments

Where the Customer does not make payment in respect of specific Goods, payment must be treated as having been made first in respect of Goods which have passed out of the possession of the Customer, and then in respect of whatever Goods still in the possession of the Customer the Seller elects.

15.3 Customer's obligations until paid for

Until the Goods have been paid for in full the Customer:

- (1) must properly store, protect and insure the Goods;
- (2) agrees not to sell, assign, charge or otherwise encumber or grant any interest over any obligations which any third party may owe to the Customer as a result of the use, manufacture or resale of the Goods.

15.4 Balance sale price remains a debt

If the sale price of all Goods sold by the Seller to the Customer is greater than the sum of:

- (1) the proceeds actually received by the Seller in respect of all dealings by the Customer with the Goods; and
 - (2) all other payments received by the Seller in respect of the Goods;
- the difference remains a debt owing by the Customer to the Seller.

15.5 Reclaim possession if Insolvency Event occurs

The Seller is entitled to reclaim possession of the Goods, even if they have been paid for in full, in satisfaction of all debts owing to the Seller, if any of the following events occurs (**Insolvency Event**):

- (1) the Customer defaults under these terms or conditions;
- (2) the Customer commits an act of bankruptcy;
- (3) a receiver is appointed to the Customer;
- (4) the Customer goes into liquidation, administration, or some other form of insolvency administration whether formal or informal;
- (5) the Customer ceases to carry on business; or
- (6) the Customer enters into a scheme or compromises with its creditors;

without prejudice to any other rights of the Seller.

15.6 Seller's authority to inspect and reclaim

The Customer irrevocably authorises the Seller at any time, to enter any premises:

- (1) upon which the Seller's Goods are stored to enable the Seller:
 - (a) to inspect the Goods; and/or
 - (b) if the Customer has breached these terms and conditions, or has committed an Insolvency Event (as described in clause 16.1), to reclaim possession of the Goods; and
- (2) upon which the Customer's records pertaining to the Goods are held to inspect and copy the records.

15.7 Goods attached to premises

The Seller's property in the Goods is not affected by the fact that the Goods become fixtures attached to premises of the Customer or a third party, and if the Seller enters those premises for the purpose of reclaiming possession of the Goods, and incurs any liability to any person in connection with the entry or reclamation, the Customer indemnifies the Seller against that liability.

15.8 Goods supplied on credit

The provisions of this clause 15 apply despite any arrangement between the parties under which the Seller grants the Customer credit. Where the Seller grants the Customer credit for a specific period the credit period is for that period or until the resale of the Goods by the Customer or their use by the Customer in a manufacturing or construction process of its own or a third party, whichever is the earlier.

15.9 Action before property passes

The Seller may commence legal action against the Customer if the Goods are not paid for within the Seller's usual credit terms or any separate arrangement for credit made by the Seller with the Customer although property in the Goods has not passed to the Customer.

16. Insolvency of Customer

16.1 When breach occurs

A breach of contract must be treated as having occurred if:

- (1) an application or order is made to or by a court or a resolution is passed for the winding

- up of the Customer or notice of intention to propose such a resolution is given; or
- (2) a controller (as defined in section 9 of the *Corporations Act 2001*) or an administrator under Part 5.3A of the *Corporations Act 2001* is appointed in respect of the Customer, or the whole or any part of its undertaking or property.

17. Exclusions and limitations

17.1 Conditions and warranties required to be binding

The only conditions and warranties which are binding on the Seller in respect of:

- (1) the state, quality or condition of the Goods supplied by it to the Customer; or
- (2) advice, recommendations, information or services supplied by it, its employees, servants or agents to the Customer regarding the Goods, their use and application;

are those imposed and required to be binding by statute (including the *Competition and Consumer Act 2010 (Cth)*).

17.2 Limitation on liability

To the extent permitted by statute the liability, if any, of the Seller arising from the breach of the conditions or warranties referred to in clause 17.1 is, at the Seller's option, limited to and completely discharged:

- (1) in the case of the Goods, by either:
 - (a) the supply by the Seller of equivalent Goods; or
 - (b) the replacement by the Seller of the Goods supplied to the Customer; and
- (2) in the case of advice, recommendations, information or services, by supplying the advice, recommendations, information or services again.

17.3 Exclusion of other conditions and warranties

Except as provided in this clause 17 all conditions and warranties implied by law in respect of the state, quality or condition of the Goods which may apart from this clause be binding on the Seller are excluded.

17.4 Acknowledgments by Customer

The Customer acknowledges that the Customer does not rely and it is unreasonable for the Customer to rely on the skill, judgment or advice of the Seller as to whether the Goods supplied are reasonably fit for any purpose for which they are being acquired, and that the sale is not a sale of Goods by description or sample.

17.5 Exclusion of consequential loss

Except to the extent provided in this clause 17 the Seller has no liability (including liability in negligence) to any person for:

- (1) any loss or damage consequential or otherwise suffered or incurred by that person in relation to the Goods or advice, recommendations, information or services; and
- (2) in particular without limiting clause 17.5(1) any loss or damage consequential or otherwise suffered or incurred by that person caused by or resulting directly or indirectly from any failure, defect or deficiency of any kind of or in the Goods or advice, recommendations, information or services;
- (3) any loss or damage arising from the late supply or delivery of the Goods.

18. Indemnity

18.1 The Customer indemnifies the Seller, regardless of any negligence on the part of the Seller, against:

- (1) all losses incurred by the Seller;
- (2) all liabilities incurred by the Seller; and
- (3) all costs actually payable by the Seller to its own legal representatives (whether or not under a costs agreement) and other expenses incurred by the Seller in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal);

arising directly or indirectly as a result of or in connection with the supply of Goods by the Seller to the Customer unless caused by wilful misconduct on the part of the Seller or any of its employees or agents acting within the scope of their employment.

18.2 The Customer must pay to the Seller all liabilities, costs and other expenses referred to in clause 18.1, whether or not the Seller has paid or satisfied them.

19. Testing

19.1 All the Goods are manufactured from high-grade materials and to rigid specifications, but since the Seller has no control over the conditions under which the Goods are applied, used, stored, transported or handled the Customer is advised to test the Goods thoroughly before adapting them to its own use.

20. Privacy

20.1 Where Goods are supplied to the Customer on credit the Customer irrevocably authorises the Seller, its employees and agents to make such enquiries as it considers necessary to investigate the credit worthiness of the Customer including (without limitation) making enquiries from persons nominated as trade referees, the bankers of the Customer or any other credit providers (**Information Sources**) and the Customer authorises the Information Sources to disclose to the Seller all information concerning the Customer which is within their possession and which is requested by the Seller.

21. Vienna Sales Convention

21.1 The application of the *Sale of Goods (Vienna Convention) Act 1986* (NSW) is excluded.

22. Force majeure

22.1 If a party is prevented from or delayed in complying with an obligation (other than to pay money) by an event beyond its reasonable control, performance by it of that obligation is suspended during the time, but only to the extent that, compliance is prevented or delayed.

23. Entire understanding

23.1 These terms and conditions:

- (1) are the entire agreement and understanding between the Seller and the Customer on everything connected with the subject matter of these terms and conditions; and
- (2) supersede any prior agreement or understanding on anything connected with that subject matter.

23.2 The Seller and the Customer have entered into these terms and conditions without relying on any representation by the other or any person purporting to represent the other.

24. Waiver

24.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

24.2 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

24.3 A waiver is not effective unless it is in writing.

24.4 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

25. Governing law

25.1 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.