

Standard Commercial Credit Terms and Conditions of Trade

1. Definitions

Client means any party engaging or proposing to engage the services of Mactec Electrical either verbally or in writing, and has the same meaning as buyer, customer, consumer or purchaser.

Mactec means Mactec Electrical (ABN 36 132 415 028).

Goods means tangible goods, tangible items, tangible parts, tangible products or tangible benefits.

Services means design, work, intangible goods, intangible products or intangible benefits.

Work Site means a single location or multiple locations relating to the performance of work (Services) by Mactec for the Client or for the delivery of products, materials or Goods by Mactec for the Client, other than the premises of Mactec.

2. Agreement

1. In engaging Mactec Electrical for the performance of any Services, or for the supply of any Goods, the Client acknowledges acceptance of these Terms and Conditions of Trade, the associated costs and charges for Services and Goods, and agrees to make payment for such under the terms for payment set out herein. The Client acknowledges that it has represented ability to pay for the Services to be completed and the Goods to be supplied.
2. On entering into this agreement the Client acknowledges it will be deemed to have made a credit application to Mactec. In so doing the Client includes all related parties such as the Director(s)/Proprietor(s)/Partner(s)/Individual(s) as guarantors who will remain jointly and severally liable for the observance of this agreement.
3. The Client agrees to provide financial information as is reasonably required by Mactec from time-to-time for the assessment of current and future credit limits only. Such information shall be treated as strictly confidential.
4. Where Goods are/or Services are supplied to the Client on credit, the Client irrevocably authorizes Mactec, its employees and/or agents to make such enquiries as deemed necessary to investigate the creditworthiness of the Client from time-to-time including (but not limited to) the making of enquiries of persons nominated as trade referees, the bankers of the Client or any other credit providers, and the Client hereby authorizes the information sources to disclose to Mactec such information concerning the Client that is Within their possession and which is requested by Mactec.
5. Where a written quotation has been provided by Mactec these Terms and Conditions of Trade shall form part of that quotation, and the written terms of the quotation shall override any contrary terms of this document.

6. Where a written quotation has been provided by Mactec, all descriptive specifications such as illustrations, drawings, dimensions and the like that are furnished by Mactec are approximate only and intended only to act as a general description of the Goods and/or Services and do not necessarily form part of the contract unless specifically identified as such by Mactec in writing.
7. Where a written quotation has been provided by Mactec, Client acceptance shall be;
 - a. by written notice to Mactec within 30 days of the date of the quotation, or
 - b. by permitting Mactec to commence any part of the quoted Services, or
 - c. by receiving delivery of any of the quoted Goods.
8. Upon acceptance by the Client a binding contract ('the contract') shall be created between the Client and Mactec based solely on the terms detailed in the quotation and this document. Furthermore:
 - a. No change in the terms of the contract shall be effective unless agreed in writing by Mactec.
 - b. The waiver or breach by Mactec of any term of the contract shall not constitute a waiver or breach of any other term of the contract.
 - c. Mactec reserves the right to decline acceptance before commencement of any works.
9. In the absence of a written agreement between the Client and Mactec detailing a fixed scope of work and an associated fixed price for the provision of Goods and/ or Services by Mactec, the cost for such shall be borne by the Client on a 'Do and Charge' basis.
10. The details of 'Do and Charge' works shall generally be detailed on a Mactec Job Card document. The act of signing such a Job Card(s) by the Client or an agent of the Client constitutes acceptance by the Client of the associated charges described in the published Schedule of Rates and Charges of Mactec and of all terms and conditions detailed herein.
11. Where a Mactec Job Card(s) and other documentation is made available in electronic format, digital signatures are agreed to be equivalent to physical written signatures.
12. The charges and rates for products, materials, Goods and Services provided by Mactec on a 'Do and Charge' basis may be varied from time-to-time at the discretion of Mactec.

3. Estimates and Quotations

1. All prices quoted by Mactec are in \$AIJD and are exclusive of GST (Goods and Services Tax) unless otherwise stated.
2. Unless otherwise stated, all prices quoted by Mactec are based on the work associated with the quotation being performed during times of ordinary rates of pay for labour and on the basis of a 38-hour week occurring between the times of 7.30am and 4.00pm Monday to Friday excluding public holidays. Work required by the Client to be performed outside of these hours shall be additional to the agreed price and calculated at after-hours rates.
3. Unless otherwise stated, all prices quoted by Mactec exclude allowance for site inductions which will be chargeable in addition to the agreed price.
4. All prices quoted by Mactec are valid for thirty days from the date of issue unless otherwise stated.

5. All prices quoted by Mactec and detailed as "Budget Price" or "Budget Estimate" or wording with similar meaning are best estimates only and do not constitute a fixed price offer.
6. All prices quoted by Mactec are based on the published AEEMA copper index and relevant foreign currency exchange rates as at the date of the quotation. Movements in this index or foreign currency exchange rates between the issue date of the quotation and acceptance by the Client shall entitle Mactec to vary the quoted price accordingly.
7. All prices quoted by Mactec do not include any payment that may be required to any statutory body unless otherwise stated.
8. All prices quoted by Mactec are conditional upon the Work Site being free from asbestos and other toxic substances and should asbestos or other toxic substances become evident then the Client shall accept full responsibility and costs for the resolution of any problems arising as a result of such substances.
9. All prices quoted by Mactec are based on the Client clearly providing, identifying and marking all necessary survey and datum points.
10. All prices quoted by Mactec involving excavation, trenching, backfill and the like do not include allowance for the encounter of rock, shale or water during the performance of any associated works nor for any specific compaction other than free fill by gravity. Additional charges incurred for the identification, breaking, removal, transportation and disposal of rock, shale or water and/or compaction to levels other than free fill by gravity shall be borne by the Client.
11. All prices quoted by Mactec are based on Mactec being permitted to excavate by machine where excavation is required for the execution of the work detailed in the quotation. If the Client requires that Mactec performs excavation work by hand, then Mactec shall be entitled to vary the agreed price to take into account additional costs associated with hand excavation.
12. If the Client fails to advise Mactec in writing prior to the commencement of any excavations of the location and type of underground services and such services are damaged by Mactec then the Client shall indemnify Mactec against any loss, damage or expense of whatsoever nature incurred in making good any loss or damage that Mactec may make to the underground services.
13. All prices quoted for Goods are for delivery to Mactec. Costs and charges for freight and handling from the point of delivery to the Client, the Client's Work Site, or the Client's agent are payable by the Client unless otherwise stated.

4. Work Schedule

1. If not previously notified by the Client, then at the time of acceptance of a quotation provided by Mactec the Client shall submit to Mactec the proposed work schedule for the execution of the work detailed in the quotation. If Mactec agrees to the work schedule, then it shall form part of the contract between the Client and Mactec and shall not be varied except in accordance with these terms. If a work schedule is not submitted or agreed upon then Mactec shall complete the work detailed in the quotation in a time which is reasonable in all circumstances.
2. Within fourteen days after acceptance of a quotation provided by Mactec the Client shall provide possession of all or part of the Work Site to Mactec sufficient for Mactec to commence the works associated with the quotation in a clear and unimpeded manner as required by the work schedule. Thereafter the Client shall provide possession of

further parts of the Work Site as and when required by Mactec in order to complete the works in accordance with the terms of the contract.

3. The Client is at all times responsible to ensure suitable access to the Work Site, and indemnifies Mactec and/or its servants or agents against any loss or damage in the event Mactec fails to provide suitable access to the Work Site for delivery of Goods and/or whilst attempting to perform Services.
4. If scheduled work at the Work Site must be delayed or cancelled and no alternative activities can be undertaken and Mactec cannot otherwise re-deploy the resources allocated to that particular work, Mactec shall be entitled to levy a cancellation fee based on man hours and materials committed to the work at the time of cancellation.
5. If all work associated with a quotation provided by Mactec is not completed within six months from the date of the quotation then Mactec shall be entitled to vary the agreed price to take into account any rise in the costs of labour, materials and overheads.

5. Extensions of Time

1. Where a work schedule has been provided by the Client and Mactec is delayed due to cause beyond its control (including but not limited to acts of God, strikes, lockouts or other industrial disturbances, fire, explosion, regulations or orders of any statutory authority or delays caused by any other person, company or authority) then Mactec shall be entitled to an extension of time to complete the associated work while such cause for delay exists.
2. If any delay persists for six months or more then either party may by notice in writing to the other terminate the associated contract for the work. The termination of such contract shall not affect the rights and obligations of either party that accrued prior to such termination.

6. Variations

1. Where a written quotation has been provided by Mactec and accepted by the Client and the Client or any of its agents varies any conditions detailed in that quotation after so accepting it, including but not limited to design, quantity, type, rating, brand, color, location, hours of work or site access, then Mactec shall be entitled to vary the agreed price to take into account such changes and shall be entitled to an extension of time to complete the work where such changes impact on the time taken to complete the work.
2. If there are changes in the condition of the Work Site, plant or equipment which arise after the time when the quotation was developed, including changes resulting from the involvement of others, then Mactec shall be entitled to vary the agreed price to take into account any associated additional costs incurred.
3. If Mactec is required to pay its employees any additional rates or sums above that detailed in the prevailing employment instrument relevant to Mactec due to conditions associated with the Work Site such as site allowances, redundancy provisions and the like then it shall be entitled to vary the agreed price to take into account any associated additional costs incurred.
4. Where extra cost in labour, materials or overhead is occasioned by Mactec by virtue of acceleration of the agreed work schedule or due to the presence of obstacles that could not have reasonably been anticipated by Mactec then Mactec shall be entitled to vary the agreed price to take into account such conditions.

5. If employees of Mactec working under Award provisions must necessarily be paid irrespective of weather conditions at the Work Site, the cost to Mactec of employing such personnel whilst they are unable to work, due solely to the advent of inclement weather, shall be added to the price of the contract.
6. Where costs are levied by Distribution Network Supply Providers or other Statutory Authorities extra to those anticipated by Mactec, the agreed price will be varied accordingly.
7. Where the written quotation provided by Mactec provides no precedent for determination of the price of a particular variation, that variation shall be calculated on a 'Do and Charge' basis.
8. The Client shall be deemed to have accepted any claim from Mactec for variations unless within ten (10) working days of receiving such claim the Client provides in writing a reasonable explanation for not accepting such claim.

7. Completion

1. Unless otherwise agreed in writing, the responsibility of Mactec in respect of commissioning any work performed by Mactec shall be limited to proving conformance with the prevailing requirements as at the date of commencement of the work of:
 - a. AS3000, and
 - b. any authority relating to the supply and use of electricity or electrical installations, and
 - c. any written specification provided by the Client as at the date of an associated quotation for the work provided by Mactec.
2. Unless agreed otherwise, the Client shall make good all finished surfaces, including but not limited to ceiling tiles and panels, face brickwork and rendered masonry surfaces, which Mactec may reasonably have to break into or disturb in performance of the contracted works.
3. Mactec shall hand over sections of the works, as and when completed, to a representative of the Client at the Work Site. The Client shall accept such sections and such sections shall thereafter be at the Client's risk and be deemed to be practically complete. The same will be true if the Client requests that Mactec cease or defer any section of work prior to completion. Regardless of completion, property shall remain that of Mactec until full payment for any section of works.

8. Work Site Compliance

1. As required by Mactec, the Client shall designate an area of the Work Site for Mactec to store any materials, plant, tools or similar items to be used in the provision Of Services. The Client shall take all reasonable precautions to protect any such items stored on site from destruction, damage or theft, and shall be responsible for the cost of repair and/or replacement of any such items as necessary.
2. The Client shall provide access to and pay for all site services that may be required by Mactec in the provision of contracted Services including, but not limited to; ablutions, lighting, temporary power, hoisting, and scaffolding; or hereby authorizes

Mactec to do so as a variation. All site services shall comply with all applicable statutes, regulations and by-laws.

3. Mactec shall leave the Work Site cleaned by removing any dirt and marks attributable to its activities. Rubbish generated by Mactec shall be deposited in one area only per floor as designated by the Client and shall be removed at no cost to Mactec.
4. The Client warrants that all equipment and fittings supplied by the Client, and to which Mactec is required to connect its works, will conform with relevant Australian Standards and to the requirements of all statutory bodies.
5. The Client agrees and acknowledges that compliance with AS/NZA 4836:2001 for 'Safe Working on Low Voltage Electrical Installations' and other Commonwealth and State Statutory Acts and Work Place Regulations relating to work on or near live conductors may require isolation and/or disconnection work that will be charged in addition to the quoted price unless otherwise stated.
6. The Client acknowledges the obligations of Mactec under Occupational Health & Safety regulations which require Safe Work Method Statements (SWMS) and Job Safety Analysis (JSA) forms to be completed prior to commencement of works, and accepts that conduct of the necessary inspections and documentation is chargeable.

9. Title

1. Title in any products, materials or Goods sold or installed during the course of any works or Services, or in the course of supply by Mactec shall pass to the Client only upon payment in full of an associated Tax Invoice issued by Mactec.
2. Mactec shall be entitled to an unpaid vendor's lien on any products, materials or Goods until payment in full is received for an associated Tax Invoice issued by Mactec.

10. Payment

1. Payments must be made within 7 days of the date of invoice.
2. Mactec shall submit weekly progress claims on a day nominated by Mactec in respect of both those identifiable parts of work completed for the Client by Mactec and any identifiable unfixed materials and/or goods stored by Mactec which are intended for supply and/or installation as part of work performed or to be performed by Mactec for the Client.
3. The Client agrees and acknowledges that at the absolute discretion of Mactec a late payment fee of 2% per month Will be levied on any or all amounts in default of the agreed payment terms as recorded at the end of each calendar month, which may be levied retrospectively.
4. The Client will indemnify Mactec for any legal costs incurred (including but not limited to charges and commission charged by mercantile agents) in respect of any credit application, agreements, personal guarantees, securities given or other documentation required whilst credit is being offered in consequence of this agreement, and the Client further agrees to indemnify Mactec for any dishonored cheque fees incurred and in the event that the Client's account is in default of the agreed trading terms to indemnify Mactec against its collection fees and legal costs.
5. Any payments tendered by the Client to Mactec shall be applied as follows:

- a. Firstly, as reimbursement for any collection costs incurred by Mactec,
 - b. Secondly as payment of any interest charged to the Client, and
 - c. Thirdly in satisfaction or part satisfaction of the oldest portion of the Client's account.
6. Mactec may withdraw credit facilities to the Client at any time without notice. Without limiting Mactec's rights to withdraw credit, Mactec reserves the right to stop supply and place the account on hold until the account is returned to the agreed trading terms and Mactec agrees to recommence supply.

11. Warranties

1. Mactec warrants that all materials and workmanship comprising the works shall conform with the current edition of the AS/NZS 3000 Wiring Rules and the requirements of any authority regulating the supply and use of electricity or electrical installations in force on the date of the performance of the works.
2. Mactec will rectify any defects in materials or workmanship of Mactec appearing in any section of the works within 90 days of the date of practical completion of that section.
3. Any otherwise applicable warranty shall be voided by:
 - a. Modification to any work performed by Mactec, or modification to any products, materials or Goods supplied by Mactec, by any party other than the employees or authorized agents of Mactec; or
 - b. Failure to sufficiently maintain any associated work performed by Mactec, or failure to sufficiently maintain any associated products, materials or Goods supplied by Mactec; or
 - c. Misuse or use in any manner other than that intended of any work performed by Mactec, or misuse or use in any manner other than that intended of any products, materials or Goods supplied by Mactec.
 - d. Any defects or failures attributable to the activities of other trades, structural loads, vandalism or other acts and/or circumstances beyond the control of Mactec.
4. Mactec warrants all Goods supplied for the lesser of 90 days or the period of the manufacturer's warranty.
5. For Goods warranty cover beyond 90 days it is the responsibility of the Client to establish a warranty relationship with the applicable manufacturer(s) by ensuring that warranty registration requirements are complied with.

12. Risk and Liability

1. The liability of Mactec in contract or in tort for any act, omission or default arising from the design or provision of any Service or arising from the supply of any materials, products or Goods shall not extend to any consequential, economic or indirect losses.
2. The Client retains liability for all risks associated with any work, in part or in full, performed by Mactec on the Work Site, and for all risks associated with any products, materials or Goods supplied or installed, in part or in full, on the Work Site at all times. The onus for insurance against such risks rests with the Client.

3. The Client shall ensure that the employees and agents of Mactec in carrying out work for the Client shall not be exposed to any risk to health or safety. The Client shall indemnify Mactec in the event that an employee or agent of Mactec sustains injury or deterioration of health in consequence of a breach of this provision.

13. Insurance

1. Worker's Compensation and Public Liability insurance shall be effected by Mactec in relation to and during the course of any work performed by Mactec for the Client. Such insurance shall cover the interests of Mactec only.
2. The Client shall insure the works in the joint names of the Client and Mactec and shall maintain such insurance until completion of the works.
3. The Client assumes responsibility for insurance of all Goods at point of delivery.

14. Property Rights

1. The Client shall keep secret and confidential and shall not disclose to any third party without the prior written consent of Mactec any information, data, specification, drawings, reports, accounts or other documents and things supplied or made available by Mactec to the client or brought into existence by Mactec for the purpose of performance of the works set out herein and the Client shall take or cause to be taken such reasonable precautions as may be necessary to maintain secrecy and confidentiality and prevent disclosure, including obtaining confidentiality agreements from its employees, agents and subcontractors.
2. In particular, quotations are confidential between Mactec and the Client. Mactec retains the rights to, and ownership of, the quotation documentation which the Client shall not at any time disclose in any form to any third party or to any of the Client's personnel not directly involved in the decision to engage Mactec for the provision of the quoted Services and/or Goods or any resulting contract administration.
3. Mactec retains the rights to, and ownership of, any intellectual property associated with or arising from the performance of any design or work for the Client unless otherwise stated.
4. The Client agrees not to solicit or be enticed to engage any employee, subcontractor or agent of Mactec to provide Goods and/or Services in any capacity other than that provided under this contract without the prior written agreement of Mactec.

15. Assignment and Subletting

1. The Client shall not assign the contract in whole or in part without the prior written approval of Mactec.
2. Mactec shall be entitled at any time to assign the contract to its successors, nominated transferees or assigns, and these Terms and Conditions of Trade shall not be in any way affected or discharged pursuant to such an assignment.
3. Mactec shall be entitled to subcontract any or all of the work for which it has been engaged by the Client.

16. Default

1. Mactec may suspend any work for the Client, or terminate any associated contract with the Client and repossess any unfixed portions of any work performed by Mactec for the Client for which the Client has not yet paid if the Client fails to observe the terms of payment detailed in these terms or if the Client enters into an agreement or an arrangement with its creditors, or being an individual commits an act of bankruptcy or is made bankrupt, or being a company resolves or is ordered to be wound up or has a Liquidator, Receiver, Receiver and Manager, Official Manager or Administrator appointed for any or all of its assets.
2. In the event of default of the agreed trading terms by the Client, the Client by its Director(s)/Proprietor(s)/Partners/Individual(s) who are parties to this agreement charge all their Right, Title of Interest (if any) to any or all property(ies) owned/ partly owned, acquired in the future, solely or jointly by the Client/Director(s)/ Proprietor(s)/Partner(s)/Individual(s) that are parties this agreement in favor of Mactec, to better secure all monies owed to Mactec as of the date of default, with the due and punctual observance and performance of all of the obligations of the Client.
3. The Client agrees and acknowledges that Mactec may at its discretion, register a caveat on such property in respect of the interest conferred on it under this clause. In the event that Mactec is required to exercise its right under this clause, the Client grants Mactec the right to appoint a Receiver and sell the property(ies).
4. Until all invoices are paid in full, and all monies receipted and cleared, ownership of Goods remain with Mactec, but the risk passes to the Client on delivery. until Mactec is paid in full, the relationship of the Client to Mactec shall be fiduciary in respect of the Goods and the Client shall hold the goods as Bailee only for Mactec. The Client shall store the Goods separately from its own until ownership has manifested in the Client. Should the Goods be on-sold to a third party before payment, or in the event of the Appointment of an Administrator, Controller, Managing Controller, Receiver or Receiver Manager, or entry into an Informal/Formal Deed of Arrangement under the Bankruptcy Act of 1966 by the Client, the Client hereby assigns to Mactec its right of recovery of payment from the third party. The money(ies) resulting from the sale of Goods are to be specifically earmarked and placed in a separate account on trust for Mactec, until payment in full is made to Mactec for the cost of the Goods only, to guarantee clear passage of ownership to the third party innocent purchaser.
5. In the event the Client is in default of the agreed trading terms, the Client without reservation grants right of entry to any or all properties under the control of the Client, where the Goods are reasonably expected to be stored. The Client indemnifies and saves harmless Mactec, its servants or agents in relation to loss or damage as a result of the retaking of possession of the Goods. Further, in the event that Mactec exercises its right of retaking possession of the Goods, the Client grants power of sale to Mactec to resell the Goods and the Client acknowledges that any shortfall owing after the Goods are resold will be the responsibility of the Client.

17. Amendment

1. These Terms and Conditions of Trade shall apply to all transactions from which the Client is supplied Goods and/or Services on credit. If any future contract between Mactec and the Client is inconsistent with these Terms and Conditions of Trade, then

these Terms and Conditions of Trade will apply unless the subsequent contract refers to and specifically alters these Terms and Conditions of Trade in writing.

2. Mactec reserves the right to amend these trading terms provided such amendments are conveyed to the Client in writing. The Client acknowledges that such writing may be by ordinary mail to the regular address of the Client or by electronic means.

18. Cancellation

If the Client requests cancellation of a contract between it and Mactec or if it requests cancellation of any work being performed for it by Mactec then the Client shall pay Mactec for all work performed to date and Mactec shall also be entitled to a sum of 20% of the agreed price of the total work for profit, overhead and inconvenience.

19. Jurisdiction

The Laws of the State of Western Australian shall govern this contract and both parties agree to submit to the exclusive jurisdiction of the Courts of Western Australia.

End of Agreement