



Terms and Conditions

PARTIES:

The Supplier: 26-32 King Street Trading as Agrade Test and Tag ACN 146 391 808

The Customer: _____

The Premises: _____

1. DEFINITIONS

- 1.1. The Supplier is 26-23 King Street Pty Ltd Trading as Agrade Test and Tag (ACN 146 391 808) 3/184 Nepean Highway Aspendale 3195.
- 1.2. The Customer is the party or any person acting on behalf of and with the authority of the Customer that the Order is provided for.
- 1.3. The Guarantor is the person(s), or entity, who agrees to be liable for the debts of the Customer.
- 1.4. The Order shall be defined as any request for the provision of Goods and/or Services by the Customer with the Supplier which has been accepted by the Supplier.
- 1.5. The Goods are the electrical products and/or components provided by the Supplier
- 1.6. The Services include the delivery and/or supply of the Goods, installation and/or repairs done by the Supplier, including any advice or recommendations.
- 1.7. The Premises are the land and/or land and buildings where the Services are to be carried out.
- 1.8. Rules are procedures, operational guidelines and manuals detailed in writing by the Supplier and notified to the Customer relating to the use, care and maintenance of Goods or as detailed on the Supplier's website.
- 1.9. The Price is the amount invoiced for Goods supplied or Services provided or both.
- 1.10. Indirect, Special or Consequential loss or damage includes i) any loss of income profit or business; ii) any loss of good will or reputation; iii) any loss of value of intellectual property.
- 1.11. Invoices include invoices for Goods supplied or for Services provided, or both.
- 1.12. Major failure is Goods and/or Services that are unsafe and/or substantially unfit for normal purpose and cannot reasonably be made fit within a reasonable time.

2. GENERAL

- 2.1. These Terms and Conditions together with the Supplier's written or verbal quotation, the Rules, and the Supplier's Credit Application Form this Agreement.
- 2.2. Any Order requested by the Customer is deemed to be an Order incorporating these Terms and Conditions and may not be varied unless expressly agreed to by the Supplier in writing. In the event that an inconsistency exists and/or arises between these terms and the Order it is acknowledged between the parties that these Terms and Conditions will prevail.
- 2.3. No subsequent correspondence or document or discussion shall modify or otherwise vary these Terms and Conditions unless such variation is in writing and signed by the Supplier.
- 2.4. The Terms and Conditions are binding on the Customer, his heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
- 2.5. In these Terms and Conditions, the singular shall include the plural, the masculine shall include feminine and neuter and words importing persons shall apply to corporations.
- 2.6. Where more than one Customer completes this Agreement each shall be liable jointly and severally.



- 2.7. If any provision of these Terms and Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired and the offending provision shall be deemed as severed from these Terms and Conditions.
- 2.8. The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent but the Supplier acknowledges that it remains at all times liable to the Customer.
- 2.9. The failure by the Supplier to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision.
- 2.10. The Customer acknowledges that the Supplier may detail these Terms and Conditions on its website. In this event, the Terms and Conditions on the Supplier's website shall apply to any future dealings as between the parties and the Customer is deemed to have notice of any such Terms and Conditions and/or amendments.
- 2.11. These Terms and Conditions must be read in conjunction with the Supplier's Credit Application Form.

3. PLACEMENT OF ORDERS

- 3.1. Orders placed by the Customer with the Supplier will be considered valid when placing the Order verbally and/or in writing.
- 3.2. Any written Quotation given by the Supplier shall expire thirty (30) days after the date of the written quotation.
- 3.3. All prices are based on taxes and statutory charges current at the time of the Quotation. Should these vary during the period from the date of the Quotation to the date of the invoice, the difference will become the responsibility of the Customer and the Customer will be invoiced for the extra charge by the Supplier.

4. PRICE

At the Supplier's sole discretion the Price shall be either:

- 4.1. As detailed on invoices provided by the Supplier to the Customer in respect of Goods supplied or Services provided; or
- 4.2. The Supplier's quoted Price as for the Order
- 4.3. The Supplier reserves the right to change the Price in the event of a variation to the Supplier's Order. and notice in writing will be provided by the Supplier within a reasonable time.

5. PROVISION OF GOODS AND/OR SERVICES

- 5.1. The Supplier reserves their right to:
 - 5.1.1. Decline requests for any Services requested by the Customer.
 - 5.1.2. Cancel or postpone appointments at their discretion.
- 5.2. If the Customer fails to attend any appointment without prior notice, the Customer shall, at the discretion of the Supplier, be liable for a \$45.00 No Show Fee.
- 5.3. Unless specified by the Supplier to the contrary in the Order, the Supplier does not warrant that it will be capable of providing the Goods and/or Services at specific times requested by the Customer during the term of this Agreement.
- 5.4. Subject to otherwise complying with its obligations under this Agreement, the Supplier shall exercise its independent discretion as to its most appropriate and effective manner of providing the Goods and/or Services and of satisfying the Customer's expectations of those Services.
- 5.5. In the discharge of its duties, the Supplier shall comply with all reasonable directions of the Customer as to the nature and scope of the Goods and/or Services provided.
- 5.6. Nothing in the above clause shall effect the Supplier's right to exercise its own judgment and to utilise its skills as it considers most appropriate in order to achieve compliance with the said resolutions, regulations and directions or otherwise with its obligations under this Agreement.



- 5.7. The Supplier may agree to provide, on request in writing from the Customer, additional Goods and/or Services not included or specifically excluded in the Quotation/Order. In this event, the Supplier shall be entitled to make the appropriate additional charge. Additional Services includes, but is not limited to, alterations, amendments, and any additional visits by the Supplier after provision of the Services at the request of the Customer.
- 5.8. Delivery of any Goods by the Supplier to the Customer shall be deemed to be complete when the Goods are collected by the Customer or are delivered to the Customer or to the carrier as nominated by the Supplier and/or Customer.
- 5.9. The Customer is responsible for ensuring that the Goods are secured at the Premises and warrants to be responsible for any loss, damage or theft of the Goods delivered by the Supplier to the Premises.

6. ACCESS

The Customer covenants that he is either a registered proprietor of the Premises or is authorised, either expressly or by implication, to act on behalf of the Owner that the Order is provided for ("the Agent").

- 6.1. The Customer shall, where relevant, ensure the Supplier has full, safe, and unfettered access to the premises and any necessary essential services, resources, equipment, materials and information, to allow the Services to be carried out.
- 6.2. 2. The Customer will be charged an additional fee if the Supplier's work is interfered with or no proper or safe access is provided to the Supplier.
- 6.3. 3. The Customer shall at its sole expense, be responsible for securing any necessary permits and approvals of the Services to be performed by the Supplier.
- 6.4. 4. The Supplier will not be held responsible for any delay due to weather, failure of the Customer to provide required items or changes made to the quoted cost.
- 6.5. The Customer shall supply water and electricity at no cost to the Supplier.

7. PAYMENT AND CREDIT POLICY

- 7.1. Any reference to Customer shall include all Customers, unless it refers to a specific group of Customers.
- 7.2. For credit purposes, the two main groups of Customers are Non-Account Customers and Account Customers.
 - 7.2.1. **Account Customers**
 - 7.2.2. The Customer must make full payment of the Price upon provision of the Goods and/or Services.
 - 7.2.3. **Account Customers**
 - 7.2.4. For Prices more than \$5,000.00 but less than \$10,000.00, the Customer must pay 50% of the Price before commencement of the Services, and the Customer must pay the balance 50% of the Price upon completion of the Services and/or within seven (7) from the date of issue of the invoice for the Goods and /or Services.
 - 7.2.5. For Prices that are \$10,000.00 or more, the Customer must make four (4) progress payments in the following manner:
 - 7.2.6. The Customer must pay a non- refundable deposit representing 10% of the Price before the commencement of the Services; The Customer must make the remaining three (3) progress payments within seven (7) days from the date of issue of invoice(s) for the Goods and/or Services.

8. GOODS AND SERVICES TAX

- 8.1. GST refers to Goods and Services tax under the *Goods and Services Act 1999* ("GST Act") and terms used herein have the meanings contained within the *GST Act*.
- 8.2. It is hereby agreed between the Customer and the Supplier that the consideration for the Supplier expressed in this Agreement is exclusive of the Supplier's liability of GST.
- 8.3. On sale, the Customer will pay to the Supplier, in addition to the total purchase Price, the amount payable by the Supplier of GST on the taxable supply made by the Supplier under this Agreement.
- 8.4. On sale, the Supplier shall deliver to the Customer a Tax Invoice for the supply in a form which complies with the *GST Act* and Regulations.



9. DISHONOUR OF CHEQUE

If any cheque issued by the Customer or by any third party in payment of the Price and/or Rent is dishonoured:

- 9.1. The Supplier may refuse to supply any further Goods and/or Services until satisfactory payment is received in full, including bank fees and charges;
- 9.2. The Supplier is entitled to treat the dishonour of the Customer's cheque as a repudiation of this Agreement and to elect between terminating this Agreement or affirming this Agreement, and in each case claiming and recovering compensation for loss or damage suffered from the Customer.
- 9.3. The Customer may be liable for a dishonoured cheque fee of \$40.00.
- 9.4.

10. DEFAULT

- 10.1. Invoices issued by the Supplier shall be due and payable on the date of the issue of the invoice(s) for Non-Account Customers, and within seven (7) days from the date of issue of invoice(s) for Account Customers ("Default Date") depending on terms agreed with the Supplier.
- 10.2. Without prejudice to any other rights of the Supplier, the Customer may be charged account keeping fees at the rate of 10% weekly on any payment in arrears.
- 10.3. If the Supplier does not receive the Outstanding Balance for the Price on or before the Default Date, the Supplier may, without prejudice to any other remedy it may have, forward the Customer's outstanding account to a debt collection agency for further action. The Customer acknowledges and agrees that:
 - 10.3.1. After the Default Date, the Outstanding Balance shall include, but not limited to, all applicable fees and charges under this Agreement;
 - 10.3.2. In the event of the Customer being in default of the obligation to pay and the overdue account is then referred to a debt collection agency, or law firm for collection the commission payable where the collection agency charges commission on a contingency basis shall be calculated as if the agency has achieved one hundred percent (100%) recovery and shall be added to the debt and the legal costs, whether incurred directly or by the agency shall be calculated on the indemnity basis and added to and form part of the debt and the total shall be treated as a liquidated demand.

11. RISK AND LIABILITY

- 11.1. The Customer will ensure when placing Orders that there is sufficient information to enable the Supplier to execute the Order.
- 11.2. The Supplier takes no responsibility if the specifications are wrong or inaccurate and the Customer will be liable in that event for the expenses incurred by the Supplier for any work required to rectify the Order.
- 11.3. The Customer is responsible for ensuring that the Supplier is made aware of any special requirements pertaining to the Order and the Supplier relies upon the integrity of the information supplied to it.
- 11.4. The Supplier takes no responsibility and will not be liable for any damages or costs resulting in the Goods being faulty as a consequence of insufficient information provided by the Customer.
- 11.5. The Supplier takes no responsibility for representations made in relation to the Goods or any delay in the delivery of the Goods made by a third party or third party manufacturer.
- 11.6. The customer acknowledges that the Supplier shall not be liable for and the Customer releases the Supplier from :
 - 11.6.1. Any claims in respect of faulty or defective design of any Goods supplied.
 - 11.6.2. Any loss incurred as a result of delay, or failure to provide the Goods or to observe any of these conditions due to an event of force majeure, being any cause or circumstance beyond the Supplier's reasonable control.
- 11.7. The Supplier does not represent that it will carry out any Services and/or provide and/or deliver any Goods unless it is included in the Quote.
- 11.8.



12. WARRANTY

The Supplier warrants that the rights and remedies to the Customer in this Agreement for warranty against defects are in addition to other rights and remedies of the Customer under any applicable Law in relation to the goods and services to which the warranty relates.

12.1. Warranty for Services

- 12.1.1. The Supplier warrants that if any defect in any Service provided by the Supplier becomes apparent and is reported to the Supplier within fourteen (14) days of the provision of the Services (time being of the essence) then the Supplier will (at the Supplier's sole discretion) remedy the defective Service
- 12.1.2. If any Services provided by the Supplier are repaired, altered or overhauled by the Customer or caused to be repaired, altered or overhauled by the Customer without the Supplier's consent, the warranty shall cease and the Supplier shall thereafter in no circumstances be liable under the terms of the warranty.
- 12.1.3. In respect of all claims the Supplier shall not be liable to compensate the Customer for any delay in remedying the defective Services or in properly assessing the Customer's claim. The Supplier will use its best endeavours to assist the Customer with its claim. To the extent permitted by law, damages for breaches of warranties for Services are limited to the supply of the Service or the repayment of costs for having the Services rectified and or refund of price paid by the Customer.

12.2. Warranty for Goods

- 12.2.1. The Supplier warrants that if any defect in any Goods provided by the Supplier becomes apparent and is reported to the Supplier within fourteen (14) days of the supply of the Goods (time being of the essence) then the Supplier will (at the Supplier's sole discretion) remedy the defective Goods.
- 12.2.2. The warranty for Goods supplied shall be the current warranty provided by the manufacturer of the Goods. The Supplier shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods. The Supplier will use its best endeavours to assist the Customer with any claim with respect of the Goods.
- 12.2.3. The Supplier warrants:
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 compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replace if the Goods fail to be of acceptable quality and the failure does not amount to a major failure. The Customer acknowledges that additional costs incurred, such as labour and/or freight, must be borne by the Customer.

12.3. Claims Made Under Warranty

- 12.3.1. Claims for warranty should be made in one of the following ways :
- 12.3.2. The Customer must the claim in writing together with proof of purchase to the Supplier's business address stated in clause 1.1 of this Agreement;
- 12.3.3. The Customer must email the claim together with the proof or purchase to the Supplier on info@agradetestandtag.com.au
- 12.3.4. The Customer must contact the Supplier on the Supplier's business number 0407 046 188. Goods where a claim is made are to be returned to the Supplier or are to be left in the state and conditions in which they were delivered until such time as the Supplier or its Agent has inspected the Goods. Such inspection is to be carried out within a reasonable time after notification.

13. RETENTION OF TITLE

- 13.1. While the risk in Goods shall pass on delivery and/or supply (including all risks associated with unloading), legal and equitable title in the Goods shall at all material times remain with the Supplier. Whilst the Goods are in the Customer's possession the Customer:
 - 13.1.1. Shall hold the Goods as Bailee for the Supplier and shall return the Goods to the Supplier if so requested.
 - 13.1.2. Agrees to hold the Goods at the Customer's own risk and is liable to compensate the Supplier for all loss or damage sustained to the Goods



- 13.2. The Supplier is authorised to enter Premises or the premises where the Customer stores the Goods without liability for trespass or any resulting damage in retaking possession of the Goods until the accounts owed to the Supplier by the Customer are fully paid.
- 13.3. The Customer acknowledges that the Supplier may produce this clause to register its legal and equitable interest of the Goods as a secured party in accordance with the provisions of the *Personal Property Securities Act 2009*.

14. TERMINATION AND CANCELLATION

14.1. Cancellation by Supplier

- 14.1.1. The Supplier may cancel any Order to which these Terms and Conditions apply or cancel delivery of Goods and/or the provision of Services at any time before the Goods are delivered or the Services are provided by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any sums paid in respect of the Price. The Supplier shall not be liable for any loss or damage or consequential loss or damage whatever arising from such cancellation.
- 14.1.2. Without prejudice to the Supplier's other remedies at law, the Supplier shall be entitled to cancel all or any part of any Order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
 - 14.1.2.1. Any money payable to the Supplier becomes overdue and after a request for payment in writing has been made; or
 - 14.1.2.2. The Customer 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
 - 14.1.2.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer or any judgment is taken out against the Customer and remains unpaid for more than seven (7) days.

14.2. Cancellation By Customer

- 14.2.1. Any Order cannot be cancelled by the Customer unless expressly agreed to by the Supplier in writing.
- 14.2.2. In the event that the Customer cancels delivery of Goods and/or Services to be provided the Customer shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of cancellation.
- 14.2.3. If the Customer places an Order with the Supplier and the Supplier places an Order with a third party Supplier to meet the Customer's request, the Customer shall be liable for the Price of the Goods ordered if the Customer cancels the Order and the Goods have already been dispatched.

15. SET-OFF

- 15.1. The Customer shall have no right of set-off in any suit, claim or proceeding brought by the Supplier against the Customer for default in payment.
- 15.2. The Customer acknowledges that the Supplier can produce this clause in bar of any proceeding for set-off.

16. INSURANCE

- 16.1. The Supplier is not liable to provide any insurance cover for the provision of the Goods and Services. The Customer must insure the Goods for full replacement value from the time that the property in the Goods passes to the Customer, and note the interest of the Supplier on the policy.

17. AGREED USE

The Customer acknowledges that the Customer may forfeit any rights if any, he may have against the Supplier if:

- 17.1. The Goods are applied for any other use to which the Goods are not intended for and/or not in accordance with any applicable manual and/or Rules;



- 17.2. Any alteration to the Goods is carried out other than in accordance with intended alterations and/or the Goods are not repaired by an authorised repairer.
- 17.3. The Customer further acknowledges sole responsibility for any damage or injury to property or person caused by using the Goods in any way and shall indemnify in full the Supplier, its servant and its agent in relation to all such claims.

18. JURISDICTION

- 18.1. This Agreement is deemed to be made in the State of Victoria and all disputes hereunder shall be determined by the appropriate courts of Victoria

19. PRIVACY ACT 1988

The Customer and/or the Guarantor/s agrees;

- 19.1. For the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Supplier. That the Supplier may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency.
- 19.2. The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) *Privacy Act 1988*).

20. ENTIRE AGREEMENT

- 20.1. These Terms and Conditions as defined in 3.1 constitute the whole Agreement made between the Customer and the Supplier.
- 20.2. This Agreement can only be amended in writing signed by each of the parties.
- 20.3. All prior discussions and negotiations are merged within this document and the Supplier expressly waives all prior representations made by him or on his behalf that are in conflict with any clauses in this document in any way.
- 20.4. Nothing in these Terms and Conditions is intended to have the effect of contravening any applicable provisions of the *Competition and Consumer Act 2010* or the *Fair Trading Acts* in each of the States and Territories of Australia.

21. LIMITATION OF LIABILITY

- 21.1. To the extent permitted by law the Purchaser is responsible for ensuring the fitness of purpose of the product / service for the intended applications. Agrade Test and Tag accepts no liability in respect of loss arising from errors in the information supplied through any means whatsoever. In no event will any breach of contract of tort or negligence or failure of any kind, including under warranty terms Agrade Test and Tag, part or that of Agrade Test and Tag employee's agents or dealers be accepted as liability for loss of revenue or consequential loss or damage arising from any cause whatsoever.



I/We understand and agree to be bound by the Terms and Conditions set out herein.

NAME:

POSITION HELD:

SIGNATURE:

DATE: ____/____20__

WITNESS NAME:

ADDRESS:

SIGNATURE:

DATE: ____/____20__



DEED OF GUARANTEE AND INDEMNITY

We each of the undersigned, for ourselves, our respective executors and administrators jointly and severally agree that if at any time the Customer shall default in any part of its performance of this Agreement, we will on demand by the Supplier pay, to the Supplier the whole of the monies owed by the Customer to the Supplier and we will keep the Supplier indemnified against all losses, costs, charges and expenses whatsoever which the Supplier may incur by any default on the part of the Customer. This is a continuing guarantee and indemnity and shall not be released by any neglect or forbearance on the part of the Supplier enforcing payment of any of the monies owed.

We acknowledge, by signing this Guarantee, that we have read and understood the Terms and Conditions and that we have been advised to consult our respective solicitors as to our liability with respect to this Guarantee and we agree to abide by this Deed.

EXECUTED AS A DEED on this day of .

SIGNED SEALED AND DELIVERED BY:

Guarantor 1:

NAME:

ADDRESS:

CONTACT NUMBER (H)

CONTACT NUMBER (W)

SIGNATURE:

IN THE PRESENCE OF:

WITNESS NAME:

ADDRESS:

SIGNATURE:

DATE: ____ / ____ 20 ____