

TERMS AND CONDITIONS**1. DEFINITIONS**

- 1.1 This Agreement is between Bluegum Electrical Solutions Pty Ltd ABN 19 601 319 993 (referred to as "**Bluegum Electrical Solutions**", "**we**" or "**us**"), and the Client described in the Quote referred to as "**Client**" or "**you**", and collectively the Parties.
- 1.2 You have requested the services set out in the attached Quote (**Services**) at the indicated Premises (**Premises**). You agree and accept that our Services are provided to you on these Terms and Conditions (**Terms**).

2. ACCEPTANCE

- 2.1 You accept our Quote and Terms by:
- (a) signing and returning the Quote;
 - (b) instructing us to proceed with the Services;
 - (c) making part or full payment for the Services, by the methods set out in our Quote or our tax invoice to you (**Invoice**);
 - (d) any fees incurred for cancellation of services; and
 - (e) any retention of deposit as outlined in these Terms and Conditions proportionate to our business costs and time.

3. SERVICES

- 3.1 We agree to perform the Services set out in the Quote with due care and skill.
- 3.2 We pride ourselves on our Service and will take all reasonable steps to clean up any mess which were caused during the provision of our Services, making reasonable efforts to leave your Premises the way we found it.
- 3.3 We may provide the Services to you using our employees, contractors and third party providers and they are included in these Terms.
- 3.4 Suppliers of third party services who are not an employee or our direct contractor (**Third Party Services**) will be the responsibility of the Client. We are not responsible for the quality of service provided by suppliers of Third Party Services. The Client must make direct arrangements with them.
- 3.5 Our Services cover the scope in the Quote. In the event that you request additional services, we have discretion whether to perform this work or not.
- 3.6 Circumstances may arise where additional services are required in order for us to satisfactorily perform the Services. In these instances, we will take reasonable steps to contact you and obtain instructions before we proceed.
- 3.7 If we agree to perform the additional services, then we will inform you of the additional costing. You need to confirm the variation and costing before we commence work. The additional services will incur additional costs which will be invoiced to you.

4. ACCESS AND DAMAGE

- 4.1 You agree that either you or an authorised representative will be present at the Premises to provide us access to the Premises to enable us to perform our Services. If we are unable to access the Premises, we will contact you to reschedule. Additional charges may apply.
- 4.2 You acknowledge and agree that we are not responsible or liable for any damage to your Premises or property if the damage was:
- (a) unforeseeable;
 - (b) beyond our control; or
 - (c) due to existing faults or damage.

5. SAFETY

- 5.1 If at any time during the provision of the Services it is, in our discretion, unsafe to continue, we will suspend all Services until we are satisfied that the Services can be provided safely.
- 5.2 The Client acknowledges and agrees that, in the event asbestos or other toxic substances (**Hazardous Substances**) are discovered at the Premises, it is the responsibility of the Client to ensure safe removal of Hazardous Substances at its own cost. Under no circumstances will Bluegum Electrical Services handle the removal of any Hazardous Substances.
- 5.3 In the event that we are unable to continue providing our Services due to the Premises being unsafe, the Client is required to pay our Call-out Fee as set out in the Quote.

6. PRICE, INVOICING AND PAYMENT

- 6.1 You agree to pay us the fees for the Services that you have

requested, as set out in the Quote (**Price**). All amounts are stated in Australian dollars.

The Price and Services can be varied by written agreement between us, including by email.

You agree to pay our Invoices within the Invoice Terms. If an Invoice due and payable remains unpaid for more than 14 days we will cease to provide Services to you, until we receive payment of the Invoice.

If we have purchased any items, stock, products or other necessary materials (**Materials**) to provide Services to you, title in these Materials will not pass to you until full payment of the Price and if applicable, any additional Invoices rendered to you. If payment is not made or is declined for any reason, we reserve the right to reclaim the Materials from your possession, custody or control even if the Materials have been delivered to or installed at your Premises. We reserve the right to keep or sell such Materials.

We may charge interest at the rate of 1.5% per month on any amounts unpaid after the expiry of 7 days after the payment date.

If invoices are unpaid for 7 days after the payment date, we have the right to engage debt collection services for the collection of unpaid and undisputed debt, and the right to commence legal proceedings for any outstanding amounts owed to us.

If the Quote states that the fees and expenses are an estimate only, you acknowledge that the final fee may be more or less than the estimated amount. We will endeavour to advise you of any material variation from the estimate as it becomes apparent.

Our pricing structure or payment methods may be amended from time to time in our discretion.

7. CLIENT OBLIGATIONS AND CLIENT WARRANTIES

7.1 You warrant that you will not:

- (a) canvass, employ, induce or attempt to employ, induce, solicit or entice away from us, any employee or contractor that was employed by or contracted to us during the term that we provide Services to you or the prior twelve (12) month period; or
- (b) make a request to any of our employees or contractors to perform any services for you independent of Bluegum Electrical Solutions in order to circumvent the obligation to pay any fees related to Bluegum Electrical Solutions' provision of the Services.

7.2 You acknowledge and agree that if you request us to perform any underground services, prior to commencement of any such services, you must advise us of the precise location of all underground services on the Premises and clearly mark the same. The underground mains and services to be advised includes, but is not limited to, phone lines, water pipes, storm water pipes, electricity cables, gas pipes, sewerage lines, irrigation pipes, Telstra cables, fibre optic cables and oil pumping mains.

7.3 You warrant that throughout the term of this Agreement that:

- (a) any items provided by you which require installation is able to withstand installation and that any electrical connections, including, but not limited to, meter boxes, main switches, circuit breakers and electrical cables, are of the correct capacity;
- (b) there are no legal restrictions preventing you from agreeing the Terms;
- (c) you will cooperate with us and provide us with information, including specific locations of any underground services, and comply with requirements in a timely manner, as requested by us from time to time, that are reasonably necessary to enable us to perform the Services;
- (d) the information you provide to us is true, correct and complete;
- (e) you will not infringe any third party rights in working with us and receiving the Services;
- (f) you will inform us if you have reasonable concerns relating to our provision of Services under the Terms, with the aim that we and you will use all reasonable efforts to resolve the concerns;
- (g) you are responsible for obtaining any consents, licences and permissions from other parties necessary for the Services to be provided, at your cost, and for providing us with the necessary consents, licences and permissions;
- (h) you consent to the use of your name and intellectual property

- in relation to the Services in a way which may identify you;
- (i) if applicable, you have a valid ABN which has been advised to us; and
 - (j) if applicable, you are registered for GST purposes..
- 8. FEEDBACK AND DISPUTE RESOLUTION**
- 8.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about our Services, please contact any member of our staff.
- 8.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure.
- (a) The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them (**Initial Meeting**).
 - (b) If the Parties cannot agree how to resolve the dispute at the Initial Meeting, any Party may refer the matter to a mediator. If the parties cannot agree on who the mediator should be, the complainant will ask the Law Society of Victoria to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.
- 8.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.
- 9. TERMINATION**
- 9.1 The Parties may terminate the Terms by mutual agreement, by notice per the Notice Period in writing including by email.
- 9.2 Either party may terminate the Terms, if there has been a material breach of these Terms, subject to following the dispute resolution procedure.
- 9.3 We may terminate the Terms immediately, in our sole discretion, if:
- (a) we consider that a request for a Service is inappropriate, improper or unlawful;
 - (b) you fail to provide us with clear or timely instructions to enable us to provide the Services;
 - (c) it is unsafe for us to continue providing the services;
 - (d) we consider that our working relationship has broken down including a loss of confidence and trust;
 - (e) for any other reason outside our control which has the effect of compromising our ability to perform the work required within the required timeframe; or
 - (f) you fail to pay an Invoice within 14 days of the payment date.
- 9.4 On termination of these Terms you agree that any payments which you have made are not refundable to you, and you are to pay all invoices for Services rendered to you.
- 9.5 If the Client terminates this agreement early, the Client must pay for all Services provided prior to termination, including any Services which have been performed and have not yet been billed to Client.
- 9.6 On completion of the Services, we will retain your documents (including copies) as required by law or regularity requirements. Your express or implied agreement to the Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.
- 9.7 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.
- 10. WARRANTY**
- 10.1 We warrant that if any defects in the workmanship of our employees or contractors becomes apparent within five (5) years of the date the Services were provided, we will, at our discretion, replace or remedy the defect in accordance with the Australian Consumer Law (**Warranty**).
- 10.2 This Warranty will not cover any defects or damage that was caused or partly caused by:
- (a) failure by the Client to maintain any of the Materials;
 - (b) failure by the Client to follow any instructions or guidelines provided by us or any of our employees or contractors;
 - (c) any use of the Materials other than the application specified on the Quote;
 - (d) continued use of Materials after any defect becomes apparent, or would have become apparent to a reasonably prudent

- person;
- (e) reasonable wear and tear; or
- (f) any accidents.

10.3 If any of the workmanship provided by us, our employees or contractors is repaired, altered or overhauled without our consent, this Warranty will cease and we will not accept any liability for any defects in workmanship.

10.4 Where Materials have been provided but were not manufactured by us, the warranty that the Client receives shall be the warranty provided by the manufacturer of the Materials. We are not bound by or responsible for any terms, conditions, representations or warranties, other than provided by the manufacturer.

10.5 When you make a warranty claim, we will send a representative to inspect the alleged workmanship defects. You acknowledge and agree that if you make an incorrect or invalid claim against our Warranty, we will charge you a fee which will be payable at the completion of the inspection.

11. LIMITATION OF LIABILITY AND DISCLAIMERS

11.1 Our liability is governed solely by the Australian Consumer Law (**ACL**) and these Terms. We exclude all conditions and warranties implied by custom, law or statute except for your rights, warranties, guarantees and remedies which cannot be excluded, restricted or modified under the ACL (**Statutory Rights**).

11.2 Except for your Statutory Rights, all material and work is provided to you without warranties of any kind, either express or implied; and we expressly disclaim all warranties of any kind including but not limited to implied warranties of merchantability and fitness for a particular purpose.

11.3 **Services:** If you are a consumer as defined in the ACL, the following applies to you: We guarantee that the Services we supply to you are rendered with due care and skill; fit for the purpose that we advertise, or that you have told us you are acquiring the Services for or for a result which you have told us you wish the Services to achieve, unless we consider and disclose that this purpose is not achievable; and will be supplied within a reasonable time. To the extent we are unable to exclude liability; our total liability for loss or damage you suffer or incur from our Services is limited to us re-supplying the Services to you, or, at our option, us refunding to you the amount you have paid us for the Services to which your claim relates.

11.4 **Delay:** Where the provision of Services depends on your information or response, we have no liability for a failure to perform the Services in this estimated period, which is affected by your delay in response, incomplete or incorrect information.

11.5 **Referral:** On request by you, we may provide you with contact details of third party specialists. This is not a recommendation by us for you to seek their advice or to use their services. We make no representation or warranty about the third party advice or provision of services, and we disclaim all responsibility and liability for the third party advice or provision of services, or failure to advise or provide services.

11.6 **Liability:** To the extent permitted by law, we exclude all express or implied representations, conditions, guarantees, warranties and terms relating to the Services and this agreement, except those set out in this agreement, including but not limited to:

- (a) implied or express guarantees, warranties, representations or conditions of any kind, which are not stated in the Terms;
- (b) damage to any underground services due to misinformation of the location of underground services on the Premises;
- (c) any damage that occurs to your Premises or other property which was unforeseen, beyond our control, or due to existing faults or faults of previous tradesmen;
- (d) our Services being unavailable; and
- (e) any loss, damage, costs including legal costs, or expense whether direct, indirect, incidental, special, consequential and/or incidental, including loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, use or any indirect, remote, abnormal or unforeseeable loss, or any loss or damage relating to business interruption, or otherwise, suffered by you or claims made against you, arising out of or in connection with the inability to access or use the Services, and

the late supply of Services, even if we were expressly advised of the likelihood of such loss or damage.

11.7 This clause will survive termination of these Terms.

12. INDEMNITY

12.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:

- (a) any information that is not accurate, up to date or complete or is misleading or a misrepresentation;
- (b) any damage which occurs to any underground services at or connected to the Premises due to your failure to provide us with necessary information or specific locations in relation to such underground services;
- (c) any breach of these Terms; and
- (d) any misuse of the Services from or by you, your employees, contractors or agents.

12.2 You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of our Services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.

12.3 The obligations under this clause will survive termination of these Terms.

13. CANCELLATION FEES AND PAYMENT OF DEPOSIT

13.1 We charge a \$250.00 cancellation fee for any cancellation of an appointment for approved work where the cancellation is made within 24 hours of your appointment. By agreeing to engage us, you agree to incur this fee should you cancel your appointment with us within 24 hours of your appointment time (**24 Hour Cancellation Fee**).

13.2 You will be deemed to have engaged our services on payment of a deposit. Where you have engaged our services and have paid of deposit, you hereby acknowledge this deposit can become non-refundable (**Non-Refundable Deposit**) should you choose to cancel our service prior to us or our employees commencing work on your job, as follows:

15.2.1 Where our quote is for \$1,000.00 or less, there will be a \$150.00 non-refundable deposit required to cover our administrative and business costs and time;

15.2.2 Where our quote is for over \$1,000.00, there will be a \$500.00 non-refundable deposit required to cover our administrative and business costs and time

15.2.3 You acknowledge and agree that, where our quote has included special order parts from the supplier, no refund will be given to you should you vary or cancel your order. Where a deposit has been paid, the cost of these parts will be additional to our non-refund policy as stated above. We reserve the right to use the balance of the deposit to cover the cost of any special order parts from the supplier. In doing so, we will use our best endeavours to return these parts, and will only retain the cost of any special order parts where they cannot be returned to the supplier.

15.2.4 The amount retained as a non-refundable deposit has been calculated by us to be in proportion to the administrative and business costs, and time.

14. GENERAL

14.1 **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.

14.2 **Publicity:** You consent to us using advertising or publically announcing that we have undertaken work for you.

14.3 **GST:** If and when applicable, GST payable on our Services will be set out on our Invoices. By accepting these Terms you agree to pay us an amount equivalent to the GST imposed on these charges.

14.4 **Assignment:** The Terms is personal to the Parties. A Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent not to be unreasonably withheld).

14.5 **Severance:** If any provision (or part of it) of the Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) of these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of the Terms are valid and enforceable.

14.6 **Notices:** Any notice required or permitted to be given by either party to the other under these conditions will be in writing addressed to you at the address in the Quote. Our address is set out in the Quote. Any notice may be sent by standard post or email, and notice will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission.

15. **Jurisdiction & Governing Law:** These terms are governed by the laws of Victoria and the Commonwealth of Australia. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria.