

## Terms of Trade

### 1. Application of Terms of Trade

**1.1** These terms apply to all trade between **you, the customer** and **Give Industries**. These terms are effective from the above date until these terms of trade are replaced by another document. Unless the context requires otherwise, the following definitions shall apply to these terms of trade.

### 2. Definitions

**2.1 Give Industries** means '**Give Industries Limited**' and any of its related companies who have supplied goods or services. This also includes the successors and assignees of those companies.

**2.2 Customer/ Client** means the person/s ordering the Works as specified in any invoice, document or order. These terms of trade include the Customer's trustees, executors [if an individual or successors], permitted assigns, and/or administrators.

**2.3 Works** means all Works or Materials provided by the Give Industries to the Client at the Client's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).

### 3. Acceptance

**3.1** The Customer is considered to have accepted these terms of trade if a work order is placed and/or a quote is accepted. Give Industries is unable to commence work prior to terms of trade being accepted.

**3.2** These terms of trade cannot be amended without Give Industries' written consent. These terms of trade prevail to the extent of any inconsistency with any other document or agreement between the Customer and Give Industries.

### 4. Payment

**4.1** The Price shall be either **(a)** as indicated on invoices provided by Give Industries to the Customer in respect of Works provided; or **(b)** Give Industries' quoted Price (subject to clause 4.2) which is binding upon Give Industries provided the quotation has been

accepted by the Customer within sixty (60) days; or **(c)** outlined in a maintenance contract mutually agreed to by Give Industries and the Customer (subject to clause 4.2)

- 4.2** Give Industries reserves the right to modify the Price **(a)** if a variation to the Works originally scheduled (including applicable designs, plans, and/or specifications) is requested; or **(b)** where additional Works are required due to the discovery on commencement of and/or during the Works of hidden or unidentifiable difficulties, including but not limited to site access limitations, poor weather conditions, obscured site defects, health hazards, safety considerations, prerequisite work by a third part not being completed; or **(c)** in the event of unforeseen increases to Give Industries in the cost of labour or Materials, which are beyond the control of Give Industries.
- 4.3** A deposit of 30% is required prior to Works beginning for Works totaling equal to or in excess of \$10,000, and/or a deposit may be required for works of lesser value at the discretion of Give Industries.
- 4.4** Give Industries may request partial Payment for Works completed or Materials purchased if Works are delayed significantly or terminated by either the Customer or extenuating circumstances prior to Works completion.
- 4.5** The Price (in full or remaining after deposit received) will be payable by the Customer no later than the date specified on the invoice supplied by Give Industries. If the Customer fails to pay the full amount due, on or before the due date, Give Industries shall be entitled to charge the Customer late payment fees and/or interest, as outlined on the provided invoice.
- 4.6** Without prejudice to any other remedies Give Industries may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Give Industries may suspend or terminate the provision of Works to the Customer. Give Industries will not be liable to the Customer for any loss or damage the Client suffers if Give Industries has exercised its rights under this clause.

## **5. Provision of Works**

- 5.1** Subject to clause 5.2, it is Give Industries' responsibility to ensure that the Works start as soon as it is reasonably possible.
- 5.2** The Works commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Give Industries' claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Give Industries' control, including but not limited to any failure by the Client to

(a) make a selection; or (b) have the site ready for the Works; or (c) notify the Contractor that the site is ready.

- 5.3** Give Industries may provide the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.4** Excluding formal written agreements, any time specified by Give Industries for provision of the Works is an estimate only and Give Industries will not be liable for any loss or damage incurred by the Client as a result of provision being late. However, both parties agree that they shall make every endeavour to enable the Works to be provided at the time and place as was arranged between both parties. In the event that Give Industries is unable to provide the Works as agreed solely due to any action or inaction of the Client then Give Industries shall be entitled to charge a reasonable fee for re-providing the Works at a later time and date.
- 5.5** Give Industries shall rely on the accuracy of any plans, specifications and other information provided by the Customer when determining time and price estimates for the provision of Works. In the event that any of this information provided by the Customer is inaccurate, Give Industries accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

## **6. Risk**

- 6.1** Give Industries shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Customer.
- 6.2** The Customer warrants that to the best of their knowledge the premises are safe for work. If, for any reason (including the discovery of asbestos, defective or unsafe wiring, or dangerous access to roofing), Give Industries reasonably forms the opinion that the Customer's premises is not safe for the Works to proceed then Give Industries shall be entitled to delay the Works (in accordance with the provisions of clause 4.2 above) until Give Industries is satisfied that it is safe for the Works to proceed.
- 6.3** The Customer acknowledges that Give Industries is only responsible for Materials which are supplied by Give Industries, and in the event that other components/goods

subsequently fail, Give Industries assumes no responsibility for any loss or damage to the Materials caused by such event.

- 6.4** The Customer acknowledges that in the event that Give Industries is requested to perform a temporary repair, the Customer accepts that the repair is temporary and Give Industries offers no guarantee against reoccurrence, effectiveness or further damage.
- 6.5** Where Give Industries gives advice or recommendations to the Customer (or the Customer's agent) in regards to the Works, including specific instructions regarding the repair or use of the Materials/equipment and such advice or recommendations are not acted upon then Give Industries shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the works, which will be completed at the risk and liability of the Customer.

## **7. Care of Materials**

- 7.1** Give Industries may at our discretion notify the Customer that we require to store at the worksite Materials, fittings, or plant and tools required for the Works, in which event the Customer shall supply Give Industries a safe area for storage and shall take all reasonable efforts to protect all items so stored from possible destruction, theft or damage. In the event that any such items are destroyed, stolen or damaged then the cost of repair or replacement shall be the Customer's responsibility.

## **8. Access**

- 8.1** The Customer shall ensure that Give Industries has clear and free access to the nominated site at all times discussed to enable them to undertake the Works. Give Industries shall not be liable for any loss or damage to the site unless due to the negligence of Give Industries.

## **9. Compliance with Laws**

- 9.1** The Customer and Give Industries shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any work health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 9.2** The Customer shall obtain (at their own expense) all licenses and approvals that may be required for the Works.

**9.3** The Works will be tested to ensure that the installation is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All cabling work will comply with the Australian and New Zealand Wiring Standards.

## **10. Title**

**10.1** Give Industries and the Customer agree that the Customer's obligations to Give Industries for the provision the Works shall not cease (and ownership of the Materials shall not pass) until: **(a)** the Customer has paid Give Industries all amounts owing; and **(b)** the Customer has met all other obligations due by the Customer to Give Industries in respect of all contracts between Give Industries and the Customer.

**10.2** Receipt by Give Industries of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Give Industries' ownership or rights in respect of the Materials, and this contract, shall continue.

**10.3** It is further agreed that, until ownership of the Materials passes to the Customer in accordance with clause 10.1: **(a)** the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Give Industries on request; and **(b)** the Customer holds the benefit of the Customer's insurance of the Materials on trust for Give Industries and must pay to Give Industries the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.

## **11. Cancellation**

**11.1** Give Industries may cancel any contract to which these terms of trade apply, or cancel provision of Works at any time before the Works have commenced or Material are delivered by giving written notice to the Customer. On giving such notice Give Industries shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to Give Industries for Materials already produced. Give Industries shall not be liable for any loss or damage whatsoever arising from such cancellation.

**11.2** In the event that the Customer cancels this contract, or the provision of Works by Give Industries, the Customer shall be liable for any and all loss incurred by Give Industries as a direct result of the cancellation.

**11.3** Cancellation of orders for Materials made to the Customer's specifications, or for non-standard items, will not be accepted once production has commenced or an order has been placed.

## **12. General**

- 12.1** The failure by Give Industries to enforce any provision of these terms of trade shall not be treated as a waiver of that provision, nor shall it affect Give Industries' right to subsequently enforce that provision. If any provision of these terms of trade shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 12.2** These terms of trade, and any contract to which they apply, shall be governed by the laws of Queensland, the State in which Give Industries has its principal place of business.
- 12.3** The Customer agrees that Give Industries may amend these terms and conditions at any time. If Give Industries makes a change to these terms and conditions, then that change will take effect from the date on which Give Industries notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for Give Industries to provide any Works.
- 12.4** Neither party shall be liable for any default due to any force majeure, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 12.5** The Customer warrants that it has the power to enter into this contract and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this contract creates binding and valid legal obligations on it.