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TERMS AND CONDITIONS OF TRADE

Unless a contrary intention is clear, wherever appearing in these terms and conditions:

“**goods**” includes any goods, components and/or parts thereof or any interest therein supplied to you by us and any services supplied to you by us.

“**we**”, “**us**” and “**our**” means BE Switchcraft Pty Ltd ACN 007 630 855 and includes our employees, servants, agents, contractors and representatives.

“**you**” and “**your**” means the company, sole trader or partnership with whom we have contracted with for the supply of goods.

“**PPSA**” means the Personal Property Securities Act 2009

“**purchase money security interest**”, “**security interest**”, “**financing statement**”, “**financing change statement**”, “**verification statement**”, “**interested person**” “**after acquired property**” “**security agreement**”, “**proceeds**”, “**accession**” and “**collateral**” have the respective meanings given to them under, or in the context of the PPSA.

1. Returns policy

The goods are not supplied on a sale or return basis. Once we accept your order, you are obliged to take the goods in accordance with these terms and conditions (which will apply in full force unless otherwise expressly agreed by us in writing, and notwithstanding any terms to the contrary contained in your order), although property in the goods will only pass in accordance with the terms and conditions set out in clause 5 below. We may in the exercise of our discretion agree to accept the return of goods on terms and conditions to be nominated by us.

2. Payment

- (a) Prices charged will be those ruling at the date of order of the goods and are subject to change without notice. Payment for the goods must be made within 30 days from statement. Statements will be deemed to be received by you on the day that they are faxed or emailed, if sent by facsimile or email, or on the day after they are posted, if sent by post.
- (b) You will be in repudiation of your contract with us and all monies owing by you to us will become due immediately, and we will be able to immediately enforce our rights under clause 5, if:
- you commit any act of bankruptcy;
 - a meeting of your creditors is called;
 - a mortgagee or mortgagee's agent takes possession of any of your assets;
 - a receiver of any of your assets is appointed;
 - a petition to liquidate you is issued; or
 - you otherwise come under any other form of external administration provided for in the Corporations Act.
- (c) Interest on any overdue payments must be paid by you at the rate of 1.0% per month.
- (d) Unless otherwise specified, the prices quoted are net, exclusive of Goods and Services Tax (“GST”). GST, where applicable, will be charged at the appropriate rate ruling at the date of invoice.

3. Delivery, risk & shortages

Goods will be supplied at our premises. If requested by you in writing, we will arrange freight of the goods on your behalf by an independent courier to a specified address (as well as freight insurance, where this is also the subject of the written request). You must pay to us all freight and insurance costs on demand. All risk in connection with the goods passes to you on supply of the goods to you or your servant(s), agent(s) or nominated representative(s) or, where you have requested delivery of the goods, to the courier of the goods. Any claim concerning shortage(s) of goods on delivery must be made in writing within 14 days of delivery of the goods or it will be of no force or effect whatsoever.

[Alternative clause – chose between this clause and that set out above - Delivery will be at the place you nominate or, if none is nominated, at your place of business. We will arrange for freight (and freight insurance if requested by you in writing) to deliver the goods to that place. You must pay to us all freight and insurance costs on demand. All risk in connection with the goods passes to you on delivery of the goods to you or your servant(s), agent(s) or nominated representative(s). Any claim concerning shortage(s) of goods on delivery must be made in writing within 14 days of delivery of the goods or it will be of no force or effect whatsoever. If within 48 hours of us notifying you that the goods are ready for despatch, we have not received from you sufficient forwarding instruction to enable us to despatch the goods, you will be deemed to have taken delivery of the goods from the expiry of that 48 hour period. The goods will be at your risk from that time and unless otherwise agreed by us in writing you will be liable for monthly storage charges, payable on demand.]

4. Time of despatch

Any times quoted by us for completion or despatch of goods are from receipt by us of the later of a written order from you or drawings approved by you in writing. All such times are estimates only and do not give rise to any contractual obligation

unless we have specifically contracted in writing to complete or despatch goods within a specified time or by a specified date. Any such contractual obligation is subject to us not being delayed by a change or lack of instructions from you or by an industrial dispute or by any other cause whatsoever beyond our reasonable control.

5. **Retention of title and the PPSA**

- (a) You agree that property in each and every part of the goods shall not pass until all monies due to us by you are paid in full.
- (b) You intend to and do grant a purchase money security interest to us in each and every part of the goods (and their proceeds) as security for payment of the purchase price in each and every part of the goods.
- (c) In addition, and as further security you intend to and do grant a general security interest to us in all your present and after-acquired property and its proceeds (except for that property which is or comprises items of kinds of personal property in which you have rights and which have not been supplied by us ("excepted property")) as security for payment of any and all monies at any time owed by you to us
- (d) You undertake to:
 - (i) provide any further documents and/or provide further information, such information to be complete, accurate and up-to-date in all respects which we may reasonably require to register any financing statement or financing change statement on the PPSA register;
 - (ii) indemnify, and upon demand, reimburse us for all expenses incurred in registering any financing statement or financing change statement on the PPSA register;
 - (iii) give us not less than 14 days prior written notice of any proposed change in your details, including but not limited to, changes in address, company name and/or contact details.
- (e) We may allocate amounts received from you in any manner we determine including any manner required to preserve our purchase money security interest we have in the goods.
- (f) Unless otherwise agreed to us in writing, you, nor we, shall disclose to an interested person information pertaining to our purchase money security interest or general security interest.
- (g) You waive your right to receive any verification statement under section 157 of the PPSA.
- (h) You agree, pursuant to section 115 of the PPSA and to the fullest extent permitted by law, that you shall have no rights to receive:
 - a notice of removal of accession;
 - a notice of enforcing decisions in accordance with land law decisions;
 - a notice of disposal of collateral;
 - a statement of account where there is no disposal of collateral;
 - a notice of retention of collateral.
- (i) The parties agree that these Terms & Conditions of Trade constitute a security agreement for the purposes of the PPSA.
- (j) It is further agreed, without prejudice to our rights under the PPSA, that:
 - (i) until such time as ownership of the Goods shall pass from us to you, we may give notice in writing to you to return the goods or any portion of them to us. Upon such notice your rights to obtain ownership or any other interest in the goods shall cease;
 - (ii) if you fail to return the goods to us then we or our agent may enter as your invitee upon any premises owned, occupied or used by you, where we believe the goods to be situated and take possession of the goods, without being responsible for any damage thereby caused;
 - (iii) you are only a bailee of the goods and until such time as we have received payment in full for the goods you shall hold any proceeds from the sale or disposal of the goods on trust for us in a separate account;
 - (iv) you shall not deal with our money held in trust by you in any way which may be adverse to us;
 - (v) receipt by you 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 our ownership and rights in respect of the goods shall continue;
 - (vi) we may require payment of the price of the goods or the balance of the price of the goods due together with any other amounts due from you to us arising out of these terms and conditions, and we may take any lawful steps to require payment of the amounts due and the price;
 - (vii) we can issue proceedings to recover the price of the goods sold notwithstanding that ownership of the goods may not have passed to you;
 - (viii) Until such time as you have our authority to convert the goods into other products, and if the goods are so converted, the parties agree that we will be the owner of the end products.

6. **Drawings**

All descriptive and forwarding specifications, drawings, descriptions, and particulars of weights and dimensions submitted by us are approximates only, and are intended to present only a general description or conceptual idea of the goods concerned. Unless otherwise specifically nominated by you in writing as essential requirements on your part, such matters are not contractual terms or binding requirements.

7. **Testing and inspection**

All necessary testing and inspection will be conducted at our premises. All costs and fees incurred in connection with any testing and inspection additional to the testing and inspection or costs and fees specifically included in our quote or contractual documentation may in the exercise of our discretion be charged as extras to your account.

8. **Suspension or delay of work**

If work to be performed by us is suspended or delayed by reason of your instructions or lack of instructions, we may in the exercise of our discretion increase the contract price to cover any extra costs or expenses incurred by us.

9. **Replacement or repair**

If any goods are established to our satisfaction to be defective by reason of defective materials or parts or our bad workmanship, we will at our election either repair or replace the goods or such part thereof as we deem necessary. Unless otherwise agreed by us in writing, any claim made under this clause must be made in writing within three months of delivery of the goods or it will be of no force or effect whatsoever.

10. **Exclusion of liability**

To the maximum extent permitted by law any liability on our part for defective goods will be strictly limited to the repair or replacement of goods pursuant to the above clause. Without limitation, we will not be liable to you for any economic or consequential loss or damage or for any loss of profits, production or business or for any other loss or expense whatsoever suffered by you in connection with or in consequence of any fault or defect in the goods or any act or omission (including a negligent act or omission) on our part. All warranties, guarantees and other terms prescribed by legislation or created by common law or equity that are deemed to form part of the terms of sale of goods by us to you are hereby excluded to the extent that they are capable of being excluded at law.

11. **Joint and several liability**

If there is more than one of you, you are jointly and severally bound by these terms and conditions. Likewise, if you place an order for goods acting on behalf of another person(s), you and that other person(s) will be jointly and severally bound by these terms and conditions.

12. **Previous dealings and other documentation**

No previous dealings will cause or effect a variation to these terms and conditions or be deemed to do so, nor will any term or condition set out in your order forms or other documentation. In the event of any inconsistency between the terms set out in such order forms or other documentation and the terms contained herein, the terms contained herein will apply unless and to the extent it has been otherwise expressly agreed by us in writing.

13. **Costs**

You must pay us all costs (including legal costs on an indemnity basis and all other debt collection costs including any debt collector's costs or commissions) incurred by us in connection with either the recovery of any sums due by you under these terms and conditions or any default by you under these terms and conditions. Your liability for our costs extends to administrative, collection and solicitor fees (on an indemnity basis) that are incurred by us or will be incurred by us in preserving and/or enforcing our rights under the PPSA.

14. **Charge**

You hereby charge in favour of us all land owned by you now or in the future to secure payment of all monies which are owing or are claimed to be owing to us under these terms and conditions. You acknowledge that we may at our discretion register a caveat in respect of any such land to protect our interest in the land.

15. **Assignment**

We may assign any of our rights arising under or in connection with this document without your consent, but you may only assign any of your rights arising under or in connection with this document with our prior written consent. In the event of an assignment by either us or you, the terms and conditions contained herein, including the guarantee set out above, will continue to apply as between us and you and will also apply to the assignee(s).

16. **Applicable law and exclusive jurisdiction**

Unless otherwise agreed in writing by us, the law of South Australia governs these terms and conditions and the Courts of South Australia have exclusive jurisdiction in relation to all matters whatsoever concerning these terms and conditions. You irrevocably waive any objection to the venue nominated by us in relation to any legal proceedings concerning these terms and conditions.

17. **Severance**

Every provision of these terms and conditions is independent of one another. Any provision of these terms and conditions or any part thereof which is prohibited or unenforceable in any jurisdiction will be ineffective only to the extent of such prohibition or unenforceability, and the remainder of these terms and conditions will remain in force.

18. **Use of personal information**

(a) We collect the personal information contained in this document and any other personal information related or incidental to that for the purposes of: administering your account; providing goods; collecting payment for goods; and assessing and monitoring your credit worthiness including that of your directors or partners.

(b) We may collect additional personal information about you (or your directors or partners) from, and disclose such personal information to, other credit providers or credit reporting agencies for the purposes set out above.

(c) You acknowledge your consent to the use of the personal information referred to above for such purposes and any other related purposes which may be reasonably expected.

(d) The Privacy Act 1988 gives individuals a right to access personal information held about them (subject to certain exceptions). Any requests for access to information or queries regarding our privacy policy should be directed to our Privacy Officer on 08 83462781.