

# Terms and Conditions

## GENERAL TERMS AND CONDITIONS OF TRADE

### 1.Contract of Engagement

1.1: By engaging Uwe Herbert Mertens / ABN 61 918 205 607 trading as: Uwe Herbert Mertens / The Smart Electrical UHM to perform services and/or supply materials ("Goods"), you ("the Customer") agree to be bound by the following terms and conditions.

1.2: Where more than one client has entered into this agreement, the clients shall be jointly and severally liable for all payments due to UWE HERBERT MERTENS.

### 2.Warranty and liability

2.1: The Customer agrees that it must within seven days of the date of delivery or completion of the works, give written notice to UWE HERBERT MERTENS, with particulars of any claim that the works are defective or not by the agreement between the UWE HERBERT MERTENS staff representative and the Customer. In the event that the Customer fails to give such notice within the said period, then to the full extent permitted by law, the works are deemed to have been accepted by the Customer, and all claims by the Customer against UWE HERBERT MERTENS for the works are extinguished, and the Customer must pay UWE HERBERT MERTENS for the works.

2.2: In the event of the Customer being reasonably unsatisfied with the works completed, the Customer agrees to allow UWE HERBERT MERTENS the opportunity to rectify the said works. Where the Customer refuses or otherwise prevents UWE HERBERT MERTENS from rectifying the works within seven days of advising UWE HERBERT MERTENS in writing of the particulars of any defect, to the full extent permitted by law, UWE HERBERT MERTENS shall not be liable to the Customer, and the Customer must pay all invoices in full to UWE HERBERT MERTENS.

2.3: The Customer expressly acknowledges and agrees that it has not relied upon, and UWE HERBERT MERTENS are not liable for any advice given by UWE HERBERT MERTENS, its servants, agents, representatives or employees about the suitability for any purposes of the works.

The Customer acknowledges that Materials (including but not limited to paint, timber, tiles & concrete) supplied may exhibit variations in shade tone, colour, texture, surface and finish, and may fade or change colour. Uwe Herbert Mertens will make every effort to match batches of product supplied in order to minimize such variations but shall not be liable in any way whatsoever where such variations occur.

The Customer acknowledged that under no circumstances Uwe Herbert Mertens will handle removal of asbestos products. And that the Customer must notify Uwe Herbert Mertens of any known asbestos products.

### 2.3.1: Drilling holes

The Customer acknowledges that Uwe Herbert Mertens is using a stud-finder, AC/, and metal detector to analyse cavities to avoid damage to the customer property (including but not limited to water pipes, electrical cabling).

Uwe Herbert Mertens will be under no liability to the Customer for any damages (including but not limited to incidental, special, consequential or general damages) in connection with or arising out of the supply or use of the works howsoever arising, even if due to UWE HERBERT MERTENS 's negligence, or the negligence of UWE HERBERT MERTENS servants, agents, sub-contractors or suppliers.

The Customer acknowledges that Uwe Herbert Mertens will be under no liability for any follow-up costs arising from damages to the customer property, including but not limited to, for example: water damage to flooring and furniture, and professional services such as plumbing works to repair pipe leaks.

### 2.3.2: Glass, tiles, and pavers

Tiles and pavers are not guaranteed against crazing, cracking, chipping or scratching.

Uwe Herbert Mertens will be under no liability to the Customer for any damages (including but not limited to incidental, special, consequential or general damages) in connection with or arising out of the supply or use of the works howsoever arising, even if due to UWE HERBERT MERTENS 's negligence, or the negligence of UWE HERBERT MERTENS servants, agents, sub-contractors or suppliers.

### 2.3.3: Rubbish removal and cleaning

Uwe Herbert Mertens is not responsible for the removal of rubbish from or clean-up of the building/construction site/s. This is the responsibility of the Customer or the Customer's agent, unless otherwise agreed between Uwe Herbert Mertens and the Customer at the time of quotation or in writing.

2.4: To the full extent permitted by law, all conditions, warranties, and representations express or implied by statute, common law or otherwise in relation to the works are hereby excluded, and to the full extent permitted by law, UWE HERBERT MERTENS will be under no liability to the Customer for any damages (including but not limited to incidental, special, consequential or general damages) in connection with or arising out of the supply or use of the works howsoever arising, even if due to

UWE HERBERT MERTENS 's negligence, or the negligence of UWE HERBERT MERTENS servants, agents, sub-contractors or suppliers.

2.5: These terms and conditions do not affect the rights, entitlements, and remedies compulsorily conferred on the Customer under the Competition and Consumer Act 2010 and other statutes, rules or regulations for the time being in force, and nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law and which by law cannot be excluded, restricted or modified.

2.6: If liability cannot be excluded, to the fullest extent permitted by law, UWE HERBERT MERTENS 's liability to the Customer shall be restricted at UWE HERBERT MERTENS 's option to a refund of the invoiced amounts paid by the Customer to UWE HERBERT MERTENS, or replacement of the works.

### 3.Retention of Title

3.1: UWE HERBERT MERTENS will retain title to (but not risk in) Goods delivered to the Customer or installed on behalf of the Customer until UWE HERBERT MERTENS has received full payment for them and all other sums owing to it by the Customer.

3.2: UWE HERBERT MERTENS 's right to retain title does not affect its rights as an unpaid service provider.

3.3: If the Customer, fails to make any payment to UWE HERBERT MERTENS when due, UWE HERBERT MERTENS is entitled, and the Customer grants UWE HERBERT MERTENS a license, to enter the Customer's premises and land where the Goods are situated with or without notice and to re-take possession of and remove, at the Customer's cost and expenses, the Goods in respect of which title has not passed to the Customer. UWE HERBERT MERTENS shall be entitled to use the Customer's name and to act on the Customer's behalf in exercising these rights and is not liable for any costs, losses, damages or other expenses suffered by the Customer or any third party in respect of UWE HERBERT MERTENS 's retaking possession and removing of Goods. The Customer acknowledges that UWE HERBERT MERTENS is entitled to remove the Goods even if such removal would result in damage to a structure and the Customer acknowledges that UWE HERBERT MERTENS will not be liable to the Customer for such damage, howsoever arising.

### 4.Payment of deposits and accounts

4.1: A deposit payment of minimum 50% is required to be paid by the client to UWE HERBERT MERTENS 's nominated bank account at the time of job booking and must be received before any works commence. Materials cost shall be paid upfront before the commencement of any works

4.2: Unless otherwise agreed in writing, the Customer must pay the invoices for all Goods and Services (collectively known as “the works”) and any other charges as invoiced, at the time that the invoice is issued to the Customer, which is normally immediately upon job completion. The Customer must pay all invoices in full.

4.3: Unless otherwise agreed, full payment must be received and cleared in UWE HERBERT MERTENS ’s nominated bank account within seven days of the due date as specified on the invoice. Late payment fees shall be applied to all overdue accounts. Late fees shall be calculated at +0.1% of the total balance owing per day overdue, beginning seven days from invoice due date. A \$25 Late Payment fee will be applied to all invoices more than 30 days in arrears

4.4: The Client shall not be entitled to set off against or deduct from the total of the invoiced amount any sums owed or claimed to be owed to the Client for UWE HERBERT MERTENS

4.5: Should the client wish to claim any such adjustment to be made to the amount owed to UWE HERBERT MERTENS by the Client, written notification of such claim must be received by UWE HERBERT MERTENS within seven days of invoice due date. Should an adjustment request be accepted by UWE HERBERT MERTENS, a new revised invoice will be issued by UWE HERBERT MERTENS to the client, and written notification will be made by UWE HERBERT MERTENS to the client making void the original invoice. Unless such written communication is made by UWE HERBERT MERTENS confirmation adjustment/revision of the invoiced amount, the original invoice remains intact, and the client is liable to pay the full amount of the original invoice within seven days or receiving written notification from UWE HERBERT MERTENS regarding the outcome of the Client’s invoice adjustment claim request. Late payment fees may be applied to the outstanding account from this date forward by provision 4.3 of this document.

4.6: If the Customer, fails to make any payment to UWE HERBERT MERTENS when due, the Customer agrees to pay all UWE HERBERT MERTENS ’s costs of recovering or attempting to recover from the Customer all outstanding fees, including any mercantile agent’s costs and legal costs on a full indemnity basis.

#### 5.Cancellation of scheduled works

5.1: UWE HERBERT MERTENS may cancel this contract at any time before the delivery of goods or services by giving written notice issued via email. UWE HERBERT MERTENS shall not be liable for any loss or damage whatsoever arising from such cancellation.

5.2: The Client may cancel the Works within five days of appointing UWE HERBERT MERTENS to undertake the work subject to a cancellation fee 20% of the total value of the “Works” as specified on the approved quote.

5.3: A refund of deposit amount paid by the Client to UWE HERBERT MERTENS for any cancellation of scheduled "Works"; may or may not be returned to the client at the sole discretion of UWE HERBERT MERTENS or its agents, employees, suppliers or subcontractors.

5.4: If the client wishes to cancel the scheduled "Works," then the Client shall be liable for all reasonable costs incurred by UWE HERBERT MERTENS up to the time of, or as a direct result of the cancellation.

## 6. Credit information collection and reporting

6.1: The client agrees for UWE HERBERT MERTENS or other agent appointed by UWE HERBERT MERTENS for accounts management to obtain a credit reporting agency and a credit report containing personal credit information about the Client about credit provided by UWE HERBERT MERTENS for the provision of goods and services (the Works).

6.2: The Client agrees that UWE HERBERT MERTENS or its appointed agents may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:

1. a) To assess a credit application by the Client; and/or
2. b) To notify other credit providers of a default by the Client; and/or
3. c) to exchange information with other credit providers as to the status of this credit account, where the client is in default with other credit providers; and/or
4. d) To assess the creditworthiness of the Client

The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

## 7. General

7.1: These terms and conditions will be governed by the laws of the state of Western Australia and the parties submit to the jurisdiction of this state.

7.2: If any provision of this Agreement is judged invalid, void, illegal or unenforceable for any reason whatsoever by a court of competent jurisdiction, such invalidity or unenforceability (unless deletion of such provision would materially adversely affect one of the parties) will not affect the operation or interpretation of any other provision of this Agreement to the intent that the invalid or unenforceable provision will be treated as severed from this Agreement.

7.3: UWE HERBERT MERTENS shall be under no liability whatsoever to the Client for any indirect loss and expense (including loss of profit) suffered by the Client arising out of a breach by UWE HERBERT MERTENS of this contract.

7.4: These terms and conditions constitute the entire agreement between the parties.

## 8.1 Severability

If any provision of these Terms is held to be unenforceable or invalid, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

## Contact Us

If you have any questions about these Terms and Conditions, you can contact us:

By email: [qld4860@gmail.com](mailto:qld4860@gmail.com)

By phone number: 0456 643 770

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