

Terms and Conditions of Sale

1. Agreement

a. In engaging Network Solutions for the performance of any work, or for the supply of any products, materials or goods, the Client acknowledges acceptance of the associated costs and charges and agrees to make payment for such under the terms for payment set out herein. The Client acknowledges that it has represented an ability to pay for the work to be completed.

b. Where a written quotation has been provided by Network Solutions this document shall form part of that quotation.

c. Where a written quotation has been provided by Network Solutions, acceptance shall only be by written notice to Network Solutions within 30 days of the date of the quotation. Upon such acceptance by the Client a binding contract shall be created between the Client and Network Solutions based solely on the terms detailed in the quotation and this document.

- No change in the terms of the contract shall be effective unless agreed in writing by Network Solutions.
- The waiver or breach by Network Solutions of any term of the contract shall not constitute a waiver or breach of any other term of the contract.

d. In the absence of a written agreement between the Client and Network Solutions detailing a fixed scope of work and an associated fixed price for the provision of materials, products, goods or services by Network Solutions, the cost for such shall be borne by the Client on a 'do and charge' basis.

- The details of do and charge works shall generally be detailed on Network Solutions service sheet. The act of signing such Service Sheet(s) by the Client or an agent of the Client constitutes acceptance by the Client of the associated charges by Network Solutions and of all terms and conditions detailed herein.
- The charges and rates for products, materials, goods and services provided by Network Solutions on a 'do and charge' basis may be varied from time-to-time at the discretion of Network Solutions.

e. These terms and conditions shall without further notice apply to all future transactions between Network Solutions and the Client in relation to the sale and purchase of goods and services, whether or not this document is delivered or executed in the course of the transaction.

f. For the avoidance of doubt, none of the terms and conditions contained in any document or other instrument supplied by or on behalf of the Client (including without limiting the foregoing those included in any purchase order or like document from the Client) shall apply to or form part of the contract, except and to the extent otherwise agreed in writing by Network Solutions.

g. If any provision of these terms and conditions is invalid, void or unenforceable, all other provisions which are capable of separate enforcement without regard to an invalid, void or unenforceable provision are and will continue to be of full force and effect in accordance with their terms.

h. The proper law of any contract for supply of goods or services by Network Solutions shall be the law applicable in the State of Queensland, Australia and the Client agrees to submit to the nonexclusive jurisdiction of the Courts of the State of Queensland, Australia. The Client agrees that these terms and conditions of sale shall constitute the prevailing basis of agreement in the event of conflict with any terms and conditions of purchase furnished by the Client.

2. Estimates & Quotations

a. All prices quoted by Network Solutions are exclusive of GST (Goods and Services Tax) unless otherwise stated.

b. All prices quoted by Network Solutions are based on the work associated with the quotation being performed during times of ordinary rates of pay for labour and on the basis of a 38 hour week unless otherwise stated. Work required by the Client to be performed outside of these hours shall be additional to the agreed price unless otherwise stated.

c. All prices quoted by Network Solutions are valid for thirty days from the date of issue unless otherwise stated.

d. All prices quoted by Network Solutions and detailed as "Budget Price" or "Budget Estimate" or wording with similar meaning are best estimates only and do not constitute a fixed price offer.

e. All prices quoted by Network Solutions are based on the published AEEMA copper index as at the date of the quotation. Movements in this index between the issue date of the quotation and written acceptance by the Client shall entitle Network Solutions to vary the quoted price accordingly.

f. All prices quoted by Network Solutions do not include any payment that may be required to any statutory body unless specifically stated.

g. All prices quoted by Network Solutions are conditional upon the Site Of The Works being free from asbestos and other toxic substances and should asbestos or other toxic substances become evident then the Client shall accept full responsibility and costs for the resolution of any problems arising as a result of such substances.

h. All prices quoted by Network Solutions are based on the Client providing, identifying and marking all necessary survey and datum points.

i. All prices quoted by Network Solutions involving excavation, trenching, backfill and the like do not include allowance for the encounter of rock, shale or water during the performance of any associated works nor for any specific compaction other than free fill by gravity. Additional charges incurred for the identification, breaking, removal, transportation and disposal of rock, shale or water and/or compaction to levels other than free fill by gravity shall be borne by the Client.

j. All prices quoted by Network Solutions are based on Network Solutions being permitted to excavate by machine where excavation is required for the execution of the work detailed in the quotation. If the Client requires that Network Solutions perform excavation work by hand then Network Solutions shall be entitled to vary the agreed price to take into account additional costs associated with hand excavation.

k. If the Client fails to advise Network Solutions in writing prior to the commencement of any excavations of the location and type of underground services and such services are damaged by Network Solutions then the Client shall indemnify Network Solutions against any loss, damage or expense of whatsoever nature incurred in making good any loss or damage that Network Solutions may make to the underground services.

3. Work Schedule

a. If not previously notified by the Client, then at the time of acceptance of a quotation provided by Network Solutions the Client shall submit to Network Solutions the proposed work schedule for the execution of the work detailed in the quotation. If Network Solutions agrees to the work schedule then it shall form part of the contract between the Client and Network Solutions and shall not be varied except in accordance with these terms. If a work schedule is not submitted or agreed upon then Network Solutions shall complete the work detailed in the quotation in a time which is reasonable in all circumstances.

b. Within fourteen days after the acceptance of a quotation provided by Network Solutions the Client shall provide possession of site to Network Solutions sufficient for Network Solutions to complete the works associated with the quotation in a clear and unimpeded manner as required by the work schedule.

c. If all work associated with a quotation provided by Network Solutions is not completed within six months from the date of the quotation then Network Solutions shall be entitled to vary the agreed price to take into account rise and fall in the costs of labour, materials and overhead.

4. Extensions Of Time

a. Where a work schedule has been provided by the Client and Network Solutions is delayed due to cause beyond its control (including but not limited to acts of God, strikes, lockouts or other industrial disturbances, fire, explosion, regulations or orders of any statutory authority or delays caused by any other person, company or authority) then Network Solutions shall be entitled to an extension of time to complete the associated work while such cause for delay exists.

b. If any such delay detailed in Clause 5.a persists for six months or more then either party may by notice in writing to the other terminate the associated contract for the work. The termination of such contract shall not affect the rights and obligations of either party that accrued prior to such termination.

5. Variations

a. Where a written quotation has been provided by Network Solutions and accepted by the Client and the Client or any of its agents varies any conditions detailed in that quotation after so accepting it, including but not limited to design, quantity, type, brand, colour, location, hours of work or site access, then Network Solutions shall be entitled to vary the agreed price to take into account such changes and shall be entitled to an extension of time to complete the work where such changes impact on the time taken to complete the work.

b. If Network Solutions is required to pay its employees any additional rates or sums above that detailed in the prevailing employment instrument relevant to Network Solutions due to conditions associated with the Site Of The Works such as site allowance, redundancy provisions and the like then it shall be entitled to vary the agreed price to take into account any associated additional costs incurred unless otherwise stated.

c. Where extra cost in labour, materials or overhead is incurred by Network Solutions by virtue of acceleration of the agreed work schedule or due to the presence of obstacles that could not have reasonably been anticipated by Network Solutions then Network Solutions shall be entitled to vary the agreed price to take into account such conditions.

6. Commissioning

Unless otherwise agreed in writing, the responsibility of Network Solutions in respect of commissioning any work performed by Network Solutions shall be limited to proving conformance with the prevailing requirements as at the date of commencement of the work of:

- AS3000, and
- Any authority relating to the supply and use of electricity or electrical installations, and
- Any written specification provided by the Client as at the date of an associated quotation for the work provided by Network Solutions.

7. Compliance

The Client warrants that all equipment and fittings supplied by the Client, and to which Network Solutions is required to connect its works, will conform with relevant Australian Standards and to the requirements of all statutory bodies.

8. Risk & Title

a. Title in any products, materials or goods sold or installed during the course of any works, or in the course of supply by Network Solutions shall pass to the Client only upon payment in full of an associated Tax Invoice issued by Network Solutions.

b. Network Solutions shall be entitled to an unpaid vendor's lien on any products, materials or goods until payment in full is received for an associated Tax Invoice issued by Network Solutions.

c. Except as otherwise provided herein, the goods supplied by Network Solutions to the Client shall be at the Client's sole risk immediately on their delivery to the Client.

9. PPSA

a. The terms Collateral, Debtor, Financing Change Statement, Financing Statement, Grantor, Proceeds, Secured Party, Security Agreement and Security Interest have the meanings given in the PPSA.

b. The Client acknowledges and agrees that by accepting these terms and conditions which form part of the contract and constitute a Security Agreement that covers the Collateral for the purposes of the PPSA:

- Network Solutions holds (as Secured Party) a Security Interest over all of the present and after acquired goods supplied by Network Solutions to the Client and any Proceeds of the sale of those goods (Collateral);
- That any purchase by the Client on credit terms from Network Solutions or retention of title supply pursuant to clause 9 hereof will constitute a purchase money security interest as defined under section 14 of the PPSA (PMSI);
- The PMSI granted herein will continue to apply to any goods coming into existence or proceeds of sale of goods coming into existence;
- Network Solutions will continue to hold a Security Interest in the goods in accordance with and subject to the PPSA, notwithstanding that the goods may be processed, commingled or become an accession with other goods;
- Any Security Interest held by Network Solutions will be a continuing and subsisting interest in the Collateral with priority to the fullest extent permitted by law over all other registered or unregistered Security Interest;
- Until title in the goods pass to the Client, it will keep all goods supplied by Network Solutions free and ensure all such goods are kept free of any charge, lien or Security Interest and not otherwise deal with the goods in a way that will or may prejudice any rights of Network Solutions under the contract or the PPSA;
- In addition to any other rights under these terms and conditions or otherwise arising, Network Solutions may exercise any and all remedies afforded to it as a Secured Party under Chapter 4 of the PPSA including, without limitation, entry into any building or premises owned, occupied or used by the Client, to search for and seize, dispose of or retain those goods in respect to which the Client has granted a Security Interest to Network Solutions.

c. The Client undertakes to:

- Sign any further documents and provide such information which Network Solution set may reasonably require to register, amend or update a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPSR;
- Indemnify and upon demand reimburse Network Solutions for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPSR or releasing any Security Interests;
- Not register or permit to be registered a Financing Change Statement in the Collateral without the prior written consent of Network Solutions; and
- Provide Network Solutions not less than 7 days prior written notice of any proposed change in the Client's name, address, contact numbers, business practice or such other change in the Client's details registered on the PPSR to enable Network Solutions to register a Financing Change Statement if required.

d. This clause 10 will survive the termination of the contract to the extent permitted by law.

10. Payment

a. If applicable, payments must be made in accordance with the *Building and Construction Industry Security of Payment Act 2004* (QLD).

b. Network Solutions shall submit monthly progress claims on a day nominated by Network Solutions in respect of both those identifiable parts of work completed for the Client by Network Solutions and any identifiable unfixed materials and/or goods stored by Network Solutions which are intended for supply and/or installation as part of work performed by Network Solutions for the Client.

11. Warranties

a. Network Solutions warrants all work performed by its employees and its authorised agents against defective workmanship and against defective materials for a period of 90 days. Such 90 day period commences upon the earliest of:

- The completion or energisation of the associated work; or
- The completion or energisation of an identifiable and relative portion of the associated work; or
- The receipt of the associated products, materials or goods by the Client where the service provided by Network Solutions encompasses none other than supply.

b. Any otherwise applicable warranty shall be voided by:

- Modification to any work performed by Network Solutions, or modification to any products, materials or goods supplied by Network Solutions by any party other than the employees or authorised agents of Network Solutions; or
- Failure to sufficiently maintain any associated work performed by Network Solutions, or failure to sufficiently maintain any associated products, materials or goods supplied by Network Solutions; or
- Misuse or use in any manner other than that intended of any work performed by Network Solutions, or misuse or use in any manner other than that intended of any products, materials or goods supplied by Network Solutions.

c. Except as expressly set out in these terms and conditions and except for liability under any Prescribed Terms, to the full extent permitted by law:

- All conditions, warranties, guarantees, terms and obligations expressed or implied by law or otherwise relating to the contract or the performance of Network Solutions obligations under the contract or to any goods or services supplied or to be supplied by Network Solutions under the contract are excluded, except for those conditions and warranties as to title in the goods; and
- Without limiting the generality of the foregoing, Network Solutions gives no condition, warranty or guarantee whatsoever as to the suitability, performance or fitness of the goods for their ordinary or any special use or purpose, and the description of the goods in any document shall not import any such condition, warranty or guarantee on the part of Network Solutions.

12. Risk & Liability

a. The liability of Network Solutions in contract or in tort for any act, omission or default arising from the design or provision of any service or arising from the supply of any materials, products or goods shall not extend to any consequential, economic or indirect losses.

b. The Client retains liability for all risks associated with any work, in part or in full, performed by Network Solutions on the Site Of The Works, and for all risks associated with any products, materials or goods supplied or installed, in part or in full, on the Site Of The Works at all times. The onus for insurance against such risks rests with the Client.

c. The Client shall ensure that the employees and agents of Network Solutions in carrying out work for the Client shall not be exposed to any risk to health or safety. The Client shall indemnify Network Solutions in the event that an employee or agent of Network Solutions sustains injury or deterioration of health in consequence of a breach of this provision.

d. The Client shall keep Network Solutions indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature, including, without prejudice to the generality of the foregoing, claims of death, personal injury, damage to property and consequential loss (including loss of profit) which may be made against the Client or which the Client may sustain, pay or incur as a result of or in connection with the manufacture, sale, export, import or use of the goods or services unless such costs, claim, demand, expense or liability shall be directly and solely attributable to any breach of contract or guarantee by, or negligence of, Network Solutions or its duly authorised employee or agent.

13. Insurance

Worker's Compensation and Public Liability insurance shall be effected by Network Solutions in relation to and during the course of any work performed by Network Solutions for the Client. Such insurance shall cover the interests of Network Solutions

14. Intellectual Property

Network Solutions retains the rights to, and ownership of, any intellectual property associated with or arising from the performance of any design or work for the Client unless otherwise stated.

15. Assignment and Subletting

a. The Client shall not assign the contract in whole or in part without the prior written approval of Network Solutions.

b. Network Solutions shall be entitled to subcontract any or all of the work.

16. Default

Network Solutions may suspend any work for the Client, or terminate any associated contract with the Client and repossess any unfixed portions of any work performed by Network Solutions the Client for which the Client has not yet paid for if the Client fails to observe the terms of payment detailed in these terms or if the Client enters into an agreement or an arrangement with its creditors, or being an individual commits an act of bankruptcy or is made bankrupt, or being a company resolves or is ordered to be wound up or has a liquidator, receiver, receiver and manager, official manager or administrator appointed for any or all of its assets.

17. Payment

The agreed terms are 14 days, i.e., payment is due 14 days from date of statement, that is payment is due by the fourteenth (14th) day of the month, following the monthly Statement. The Client hereby agrees & acknowledges that at the absolute discretion of Network Solutions, interest of 5% per week will be levied on any or all amounts in default of the agreed trading terms.

The Client further agrees to indemnify Network Solutions for any legal costs incurred by Network Solutions (including but not limited to charges & commission charged by mercantile agents) in respect of this application, agreements, personal guarantees, securities given or other documentation required whilst credit is being offered in consequence of this application, and the Client further agrees to indemnify Network Solutions for any dishonoured cheque fees incurred and in the event that the Customer's account is in default of the agreed trading terms to indemnify Network Solutions against its collection fees & legal costs.

18. Cancellation

If the Client requests cancellation of a contract between it and Network Solutions or if it requests cancellation of any work being performed for it by Network Solutions for the Client then the Client shall pay Network Solutions for all work performed to date and Network Solutions shall also be entitled to a sum of 20% of the agreed price of the total work for profit, overhead, inconvenience and lost opportunity.

19. Definitions

Client means any party engaging, or proposing to engage, the services of Network Solutions, either verbally or in writing, and has the same meaning as buyer, customer, consumer or purchaser.

Collateral has the meaning given under the PPSA and in particular for the purposes of this contract, the personal property that is not used predominately for personal, domestic or household purposes as identified in clause 10 hereof to which the Security Interest has attached;

Energization means the application or instatement of electrical energy.

Goods means tangible goods, tangible items, tangible parts, tangible products or tangible benefits.

NETWORK SOLUTIONS means Network Solutions or Network Solutions (ABN 96 082 346 843)

PPSA means means the *Personal Property Securities Act 2009* (Cth);

PPSR means the personal property securities register established under section 146 of the PPSA;

Prescribed Terms means any terms, conditions, guarantees and warranties which the *Competition and Consumer Act 2010* (Cth) and any other law expressly provides may not in respect of the contract between the Client and Network Solutions be excluded, restricted or modified, or may be excluded restricted or modified only to a limited extent;

Services means design, work, intangible goods, intangible products or intangible benefits.

Site Of The Works means a single location or multiple locations relating to the performance of work by Network Solutions for the Client or for the delivery of products, materials or goods by Network Solutions for the Client, other than the premises of Network Solutions.