



Quickpro Electrical Pty Ltd Trading as Newman's
Rewinding
45 Leyland St
GARbutt QLD 4814
Phone: 07 4774 6066
Email: hello@newrewind.com.au
ABN: 83 125 163 304

TERMS AND CONDITIONS OF TRADING

1. DEFINITION AND INTERPRETATION

1.1 Definition

In this Agreement:

- a) **"Account Application"** means the application made or to be made by the Purchaser for credit to be provided by the Company to the Purchaser;
- b) **"Agreement"** means these Terms and Conditions, each Purchase Order delivered by the Purchaser to the Company for the supply of Goods and any Account Application (as applicable);
- c) **"Company"** shall mean Quickpro Electrical Pty Ltd ACN 125 163 304 trading as Newman's Rewinding, the provider of goods to the Purchaser and includes the Company's successors and assignees;
- d) **"Goods"** means the goods and/or other items of personal property supplied or to be supplied by the Company to the Purchaser in accordance with a Purchase Order and/or this Agreement. For the purposes of clause 15, Goods includes commingled goods and any other item in which any Goods may be incorporated as parts, components or materials and the proceeds of sale of any of them;
- e) **"PPSA"** means the *Personal Property Securities Act 2009* (Cth);
- f) **"PPSR"** means the Personal Property Securities Register under the PPSA;
- g) **"Purchaser"** shall mean the buyer of Goods named in any Account Application or Purchase Order and includes the Purchaser's executors, administrators, successors and permitted assignees;
- h) **"Purchase Order"** means any order or request made by the Purchaser for the supply by the Company of Goods and/or services in any form and includes an oral request for the supply of Goods, or an invoice, proposal or quote provided by the Company at the Purchaser's request.

1.2 Interpretation

These Terms and Conditions, any Purchase Order and/or any Account Application will be read and interpreted as a single agreement but if there is any conflict or inconsistency between any Account Application, these Terms and Conditions and/or any Purchase Order, the various parts of the Agreement will be interpreted and applied in the following order:

- a) firstly, these Terms and Conditions;
- b) secondly, the Account Application; and
- c) thirdly, the relevant Purchase Order.

2. FORMATION OF CONTRACT

- a) The delivery by the Purchaser of an Account Application or a Purchase Order, or the acceptance by the Purchaser of Goods provided by the Company constitutes acceptance of these Terms and Conditions and the terms of the Agreement.
- b) These Terms and Conditions are subject to change at any time by the Company. The Purchaser is deemed to have accepted any changes to these Terms and Conditions or to any of the Company's credit terms immediately upon the earlier of:
 - (i) the next delivery of Goods or services by the Company to the Purchaser; or
 - (ii) the Purchaser delivering a Purchase Order to the Company after the date on which the Company notifies the Purchaser of those changes.
- c) Quotations made by the Company will not be construed as an offer or obligation to supply in accordance with the quotation.

3. PAYMENT

- a) The Purchaser:
 - (i) who is an approved account holder, shall make payment to the Company for all Goods supplied within 30 days from invoice unless otherwise negotiated and agreed in writing with the Company prior to the supply of Goods; or
 - (ii) who is not an account holder, will be required to pay prior to the supply of the Goods.
- b) The Purchaser acknowledges that a breach of any payment term/s will enable the Company to exercise all of its rights contained herein including (without limitation):
 - (i) the right to cancel further provision of credit to the Purchaser; and
 - (ii) to take legal action for the recovery of all sums outstanding; and
 - (iii) the stopping of processing for all orders for Purchasers whose accounts are in arrears.Cleared payment in full is required before the Purchaser's initial order will be processed and dispatched.
- c) The Company may at its discretion require the Purchaser to pay a deposit prior to orders being processed and/or delivery of any Goods or services. The deposit will be an amount determined by the Company. Where the Company holds a deposit from the Purchaser the deposit is security for the performance of the Purchaser's obligations in this Agreement and for the payment of all amounts owing by the Purchaser to the Company and not only the payment of the invoice price for the Goods to which the deposit relates. The Purchaser is not entitled to require the return of the deposit until all such monies are paid in accordance with the Agreement and the Company may at any time and without notice apply any deposit held from the Purchaser in satisfaction of any such amounts from time to time in accordance with this Agreement.
- d) The Purchaser shall not be entitled to withhold payment of any sums after they become due by reason of any right of set off or counter claim which the Purchaser may have or alleged to have or for any other reason whatsoever.
- e) If payment remains outstanding beyond the Company's payment terms, then the Purchaser agrees to pay an administration fee per month of either \$50.00 or 10% of the outstanding amount, whichever is greater.
- f) Should payment remain outstanding beyond the Company's payment terms as outlined above, the Purchaser agrees to pay all legal costs and all mercantile agent's fees (including any commission payable on the payment of the debt) incurred by the Company as a result of non-payment of the debt.

4. RETURN OF GOODS



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- a) Goods will be accepted for credit only by prior agreement or to the extent that they have been wrongly or oversupplied. Returned Goods must be delivered to the Company free of charge, in good order and condition, unused and in the original packing, accompanied by a dispatch note stating the original invoice number, date of supply and reason for return. Except where Goods have been wrongly or over supplied, a charge as determined by the Company will be made for handling costs.
- b) Regardless of clause 4a), the Company is not required to accept any Goods returned to it later than 30 days from the date of the invoice.
- c) Goods made to specific order cannot be returned or credited unless those goods are not made to the required specifications or otherwise not in accordance with any expressed or implied term of the Agreement.

5. DELIVERY

- a) If the Purchaser specifies a delivery date, the Company shall use its best endeavours to comply with the Purchaser's requests. In no circumstances will the Company be liable for any loss or damage of any kind whatsoever if it is not able to comply with the Purchaser's request for delivery at a certain time. The Purchaser acknowledges and agrees that it will not make any claim against the Company for any loss or damage incurred as a result of late delivery.
- b) Delivery of any Goods ordered will be effected by the Company at the deliver address specified by the Purchaser and at the Purchaser's cost. Delivery charges will be calculated and charged at the discretion of the Company.
- c) The Purchaser shall not be entitled to repudiate the Agreement as a result of the failure of the Company to deliver the Goods and services.

6. ALTERATIONS

Any alteration to an order once processed may incur additional charges which will be calculated and charged at the discretion of the Company.

7. ASSIGNMENT

The Purchaser's obligations under this Agreement cannot be transferred or assigned and any attempt to do so will be void. The Company may assign its rights and obligations pursuant to this Agreement to another party without notice to and without the consent of the Purchaser.

8. RISK

Risk in any Goods to be supplied to the Purchaser passes to the Purchaser immediately upon the earlier of:

- (i) the Company's notification that those Goods are available for collection; or
- (ii) upon delivery to the delivery address advised by the Purchaser,

whether or not the Purchaser collects the Goods or refuses delivery.

9. WARRANTY AND LIMITATION OF LIABILITY

- a) Goods will be delivered free from defects in material, workmanship and title and will conform with the Company's specification set out in a written and signed agreement between the Purchaser and the Company, if applicable ;
- b) Services will be performed in a competent and diligent manner in accordance with any mutually agreed specification .
- c) The warranties set out in clause 9 expire as follows unless otherwise stated:
 - (i) in respect of the Goods, twelve (12) months from invoice date;
 - (ii) in respect of repaired or replaced Goods or parts of Goods, upon expiration of the warranty period applicable to the Goods originally supplied by the Company to the Purchaser (if provided by way of repair or replacement under warranty). In the case of other repaired or replaced Goods or parts of Goods, six (6) months from the date of repair or manufacture of the Goods or parts of the Goods;
 - (iii) in respect of services, ninety (90) days from the date of completion of the services.
- d) If, prior to expiration of the warranty periods set out above, there is a breach by the Company of any warranty, the Purchaser's exclusive remedy shall be limited to, at the Company's sole discretion:
 - (i) in the case of Goods (including products and replacement parts), repair or replacement of the Goods, or refund of the amount paid by the Purchaser to the Company for the Goods; or
 - (ii) in the case of services, either the re-supply of the services, or the cost of having the services supplied again by the Company.
- e) The warranties set out above exclude:
 - (i) shipping expenses to and from the Company's office, factory, warehouse, authorised service centre or other destination designated by the Company for repair or replacement;
 - (ii) costs of removing defective Goods from, and/or disassembling, equipment in which Goods are assembled or reinstalling Goods and/or reassembling such Goods, or testing repaired or replaced Goods; and
 - (iii) field service travel, including living costs and expenses.
- f) To the extent permitted by law, the Company will not be liable for any contingent, indirect, consequential or special losses (including but not limited to loss of profit or income, loss of business opportunity, loss of goodwill, loss of use of the Goods, or related products, equipment or systems, cost of capital, cost of substitute products, business interruption, increased expense of operation or any financing and holding costs), damages or injuries incurred by the Purchaser or any other person whether directly or indirectly related to this Agreement.
- g) The Company is not liable for any loss or damage caused to the Purchaser by reason of any delay, lack of supply, industrial action, fire, flood, riot, war, embargo, civil commotion, act of God, government direction or any other event which is beyond the Company's control.

10. AUSTRALIAN CONSUMER LAW

- a) This clause 10 only applies if the Company supplies Goods to a Purchaser who is a "consumer" for the purposes of the Australian Consumer Law.
- b) The Company's Goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Purchaser is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Purchaser is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.

11. INDEMNITY

The Purchaser will indemnify the Company and keep the Company indemnified against any claim, loss, damage, liability, cost or expense that may be incurred by the Company arising from or in connection with any breach or default by the Purchaser of this Agreement or any related Purchase Order or contract.

12. RIGHTS OF THE COMPANY TO DISPOSE OF GOODS



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In the event that the Company retains or regains possession of the Goods ordered by the Purchaser and the Purchaser has not paid for the Goods in accordance with this Agreement then the Company may dispose of the Goods and may claim from the Purchaser any loss the Company has suffered in relation to same.

13. CANCELLATION OF ORDERS

- a) The Purchaser cannot cancel any order without the written approval of the Company. In the event that the Company accepts the cancellation of any order placed with it, it shall be entitled to charge a reasonable fee for any work done on behalf of the Purchaser to the date of the cancellation including a fee for the processing and acceptance of the Purchaser's order, request for cancellation and any restocking fee charged by a supplier.
- b) The Purchaser cannot cancel any order if Goods have been dispatched by the Company.

14. CANCELLATION OF TERMS OF CREDIT

- a) The Company may terminate the Agreement, terminate any credit used or unused, withhold supply of Goods or refuse delivery or return of Goods at any time and without reason or notice. In particular (but without limitation) the Company may do so if:
 - (i) the Purchaser becomes insolvent;
 - (ii) the Company determines that a material adverse event has occurred with respect to the Purchaser;
 - (iii) events beyond the control of the Company occur making supply impossible or undesirable to the Company;
 - (iv) the Company cannot obtain the Goods ordered in the quantity or at the price required;
 - (v) the Purchaser breaches any of the terms or conditions of the Agreement;
 - (vi) the Purchaser fails to pay any money due to the Company; or
 - (vii) the Purchaser breaches any other agreement with the Company.
- b) Upon cancellation under clause 14a) all amounts due by the Purchaser become immediately due and payable to the Company.
- c) Cancellation under clause 14a) will not affect the Company's right to institute legal proceedings for the recovery of all money owed to the Company.

15. RETENTION OF TITLE

- a) Legal and equitable title and property in the Goods is vested in the Company until full payment, in cleared funds, is made to and received by the Company for all amounts owing by the Purchaser, inclusive of the purchase price for the Goods and all any other money owing to the Company for other goods or services or on any other account. Title will not pass to the Purchaser nor to any person to whom any Goods are purported to be sold by the Purchaser until full payment has been received by the Company in accordance with clause 3.
- b) The Purchaser may, on its own account as principal, sell the original Goods supplied in the ordinary course of its business, or incorporate or use them as parts, components or materials in respect of any other product of the Purchaser subject always to the title of the Company in respect of the Goods and to clause 15a)
- c) Until payment in full has been made and is received in cleared funds by the Company, the Purchaser will:
 - (i) hold the Goods as agent of the Company;
 - (ii) store the Goods separately so that they can be identified as the property of the Company, and must not mix the Goods with other goods;
 - (iii) insure the Goods (to the extent that they are insurable) for their full replacement value and have the name of the Company noted on the policy as payee; and
 - (iv) to the extent that the Goods are the proceeds of sale, hold such proceeds (up to the total amount owing to the Company) as trustee for the Company.
- d) Until payment in full has been made and is received in cleared funds by the Company, the Purchaser must not:
 - (i) claim any interest in the Goods to secure any liquidated or unliquidated debt or obligation due by the Company to the Purchaser;
 - (ii) claim a lien over the Goods or any part of them; or
 - (iii) create or purport to create any interest in the Goods in favour of any other person without the consent of the Company.
- e) The Company may, with or without prior notice to the Purchaser, enter upon any premises at which the Goods or any part of them are stored, or at which the Company reasonably believes they are stored, to inspect the Goods and/or to take possession of the Goods and whether the Goods may be in the Purchaser's possession, custody or control. The Purchaser agrees to provide the Company with access to any such premises for that purpose. The Company may direct the Purchaser to deliver the Goods to the Company and the Purchaser must comply with that direction. The Purchaser waives the right to receive any statutory notice or any notice under the PPSA.
- f) The Purchaser must pay the Company's costs and expenses in exercising its rights under clause 15 and indemnifies the Company against any claim, action or damages arising directly or indirectly out of the exercise by the Company of any power or right under clause 15. Where the Company exercises any power to enter premises, that entry will not give rise to any action of trespass or similar action on the part of the Purchaser against the Company, its employees, servants, contractors or agents.
- g) The Company may sell or otherwise deal with any Goods repossessed by the Company, and may sell the Goods with the trademark or name of the Purchaser on those Goods, and the Purchaser grants an irrevocable licence free of charge to the Company in respect of the trademark or name for that purpose.

16. PERSONAL PROPERTY SECURITIES ACT

- a) The parties agree that terms used in this clause 16 have the same meaning and are subject to the provisions of the PPSA.
- b) The Purchaser acknowledges and agrees that:
 - (i) the purchase price for Goods is the total invoiced cost evidenced by the invoice which relates to those Goods inclusive of all parts or components of that total but without prejudice to the Company's right to amend the invoice in the case of error; and
 - (ii) clause 16 constitutes a security agreement for the purposes of the PPSA and creates a security interest in favour of the Company in all Goods supplied previously (if any) and all Goods that will be supplied in the future by the Company to the Purchaser to secure payment.
- c) It is the intention of the Company and the Purchaser that the Company's security interest is a purchase money security interest as defined in the PPSA.
- d) The Purchaser grants to the Company a security interest in all the Purchaser's present and after-acquired property in which Goods have been attached or incorporated, including commingled goods.
- e) The Purchaser agrees that the Company may attend to registration of its security interest on the PPSR without notice to the Purchaser.
- f) The Purchaser undertakes to:



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- (i) promptly sign any further documents and/or provide any further information which the Company may reasonably require to:
 - A. register a financing statement or financing change statement in relation to a security interest on the PPSR;
 - B. register any other document required to be registered pursuant to the PPSA;
 - C. correct a defect in a statement or document referred to in clauses 16f)16.16.1(a)(i)A and 16f)16.16.1(a)(i)B;
 - (ii) pay the Company for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any Goods charged pursuant to the PPSA;
 - (iii) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party, without prior written consent of the Company;
 - (iv) give the Company not less than 14 days written notice of any proposed changes in the Purchaser's details, including but not limited to changes in name, address, facsimile number, email address, trading name or business practices; and
 - (v) pay the Company for any costs incurred by the Company, including legal fees and disbursements on a Solicitor-client basis, in obtaining an order pursuant to section 182 of the PPSA and/or enforcing or attempting to enforce any security interest created in favour of the Company under this Agreement or otherwise.
- g) The Purchaser and the Company agree that sections 96, 115 and 125 of the PPSA do not apply to the security interest created by this Agreement.
 - h) Pursuant to section 144, the Purchaser waives its rights to receive notices under sections 95, 118, 121, 130, 132 and 135 of the PPSA.
 - i) The Purchaser waives its rights as a grantor and/or debtor under sections 142 and 143 of the PPSA.
 - j) The Purchaser waives its rights to receive a verification statement in accordance with section 157 of the PPSA, unless otherwise agreed to in writing by the Company.
 - k) Any payments by the Purchaser under this Agreement will be applied in the order specified in section 14(6)(c) of the PPSA regardless of any direction or request by the Purchaser, any agreement between the parties (express or implied) or the application of any such payment by the Company. The Company does not waive any rights under this clause 16 by applying any payment in a different order.

17. ADDITIONAL REQUIREMENTS

- a) The Purchaser must, at the request of the Company, provide such further information as is required by the Company, whether for the purpose of assessing the Purchaser's creditworthiness or otherwise.
- b) If the Purchaser is a corporation (other than a publicly listed company), the Purchaser must notify the Company, in writing of any change to its directors, shareholders, or its constitution. The Company may require the Purchaser to procure the execution of additional security determined by the Company (including any guarantee and indemnity to be given by additional directors or shareholders of the Purchaser) as a condition of providing further credit to the Purchaser or for maintaining the arrangements under this Agreement.

18. PURCHASER CHANGE IN STRUCTURE

- a) If the Purchaser is a corporation (other than a publicly listed company), the Purchaser must procure the execution and delivery to the Company by each of its directors of a guarantee and indemnity in relation to the Purchaser's obligations under this Agreement and in a form acceptable to the Company.
- b) If the Purchaser is a partnership, the Purchaser must notify the Company, in writing of any change to its principals or its partnership agreement. The Company may require the Purchaser to procure the execution of additional security determined by the Company (including any guarantee and indemnity to be given by additional partners) as a condition of providing further credit to the Purchaser or for maintaining the arrangements under this Agreement.

19. TRUSTEE CAPACITY

- a) If the Purchaser is the trustee of a trust (whether disclosed to the Company or not), the Purchaser warrants to the Company that:
 - (i) the Purchaser enters into this agreement in both its capacity as trustee and in its personal capacity;
 - (ii) the Purchaser has the right to be indemnified out of trust assets;
 - (iii) the Purchaser has the power under the trust deed to sign this agreement; and
 - (iv) the Purchaser will not retire as trustee of the trust or appoint any new or additional trustee without the prior consent of the Company.
- b) The Purchaser will deliver a copy of the trust deed to the Company on demand.

20. INSOLVENCY

If the Purchaser becomes insolvent, the Purchaser remains liable under this Agreement for payment of all amounts becoming payable under it. The Purchaser remains liable under this Agreement even if the Company receives a dividend or payment as a result of the insolvency of the Purchaser.

21. WAIVER

The Company may at any time and without notice, amend or vary any part of the Agreement (including the price for any Goods or services yet to be supplied). No waiver of or departure by the Company from a provision of this Agreement, will be effective unless it is in writing, signed by the Company.

22. COSTS

- a) The Purchaser must pay:
 - (i) any legal costs (on a solicitor/client indemnity basis) stamp duty, and other expenses payable in relation to this Agreement, or a guarantee or other security document provided in conjunction with this Agreement;
 - (ii) all costs incurred by the Company relating to any default by the Purchaser; and
 - (iii) the Company's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Purchaser, including debt recovery fees paid to a collection agent or otherwise and legal costs on an indemnity basis and whether or not the recovery action, claim or remedy is successful.

23. TAXES & DUTIES

- a) Where prices are expressed to be exclusive of sales tax, GST or other government imposts, the Purchaser must pay all sales tax, GST or other government imposts, fees and charges which become payable on the supply to the Purchaser in addition to the price provided by the Company.
- b) If as a result of:
 - (i) any legislation becoming applicable to the subject matter of this Agreement or any supply under it; or



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(ii) any changes in legislation or its interpretation,

the cost to the Company of performing its obligations or making any supply to the Purchaser increases (whether by way of any tax, duty, excise or levy or otherwise), the Purchaser must pay the Company such additional amounts on demand.

24. SEVERANCE

Part or all of the provisions of this Agreement that are illegal or unenforceable will be severed from this Agreement and will not affect the continued operation of the remaining provisions.

25. GOVERNING LAW

This Agreement will be governed by and construed in accordance with the laws of Queensland and each party irrevocably submits to the exclusive jurisdictions of the courts of Queensland.