

TERMS AND CONDITIONS (PAGE 1)



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DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this agreement and in any instrument created pursuant to or in accordance with it, unless the context otherwise requires:

"Base Work" means the Site conditions including work carried out by others in, on, or over which the Contractor is to carry out the Works;

"Business Day" means any day except Saturday or Sunday or a day that is a public or bank holiday in Queensland;

"Contract Documents" include all drawings, plans and specifications and all other information provided by the Customer to the Contractor;

"Completion Date" means the date for completion of the Works under the Contract;

"Contract" means the contract to carry out the Works between the Customer and the Contractor by the acceptance of the Quotation by the Customer;

"Defects Liability Period" means the period as set out in the Quotation;

"Electrical Equipment" has the meaning given to this term by the Electrical Safety Act 2002, Section 4;

"GST Act" means the Act titled A New Tax System (Goods and Services Tax) Act 1999 as amended from time to time;

"GST" has the meaning given to this term by the GST Act;

"Order" has the meaning given to this term by clause 3.3;

"Practical Completion" means the stage when the Works have been completed in accordance with the Contract and all relevant statutory requirements either without any omissions or defects or apart from minor omissions or minor defects";

"Price" means the price to be paid by the Customer to the Contractor for the performance of the Works in accordance with the terms of the Contract;

"Prime Cost Item" means an item, including, for example, a fixture or fitting –

- that has not been selected, or the price of which is not known, when the contract is entered into; and
- for the cost of supply and delivery of which a reasonable allowance is, or is to be, made in the contract by the Contractor.

"Provisional Sum" is the amount that is the Contractor's estimate of the cost of performing the Works, in relation to Works for which the Contractor, after making all reasonable enquiries, can not state a definite amount when the Contract is entered into;

"Regulated Contract" has the meaning given to this term by the Domestic Building Contracts Act 2000 (Qld);

"Receipt Day", for a Regulated Contract means:-

- the day on which the Customer receives the following documents from the Contractor:-
 - a copy of the signed Contract; and
 - a copy of the appropriate contract information statement for the Contract; or
- if the documents mentioned in (a) are received by the Customer from the Contractor on different days, the later of the days;

"Servants" means and includes servants, employees, agents, contractors and sub-contractors;

"Site" means where the works under the Contract are carried out;

"Works" means the work to be carried out under the Contract including Variations;

"Quotation" means the written quotation given by the Contractor to the Customer which must set out the scope of the Works, the commencement and completion dates of the Works, the price of the Works and the insurance cover held by the Contractor in relation to the performance of the Works;

"Variation" means to vary the Works by:

- carrying out additional work;
- omitting any part of the Works; or
- changing the scope of the Works.

1.2 Interpretation

In this agreement and in any instrument created pursuant to or in accordance with this agreement, unless the context otherwise requires:

1.2.1 a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provisions substituted for, and any subordinate legislation issued under, that legislation or legislative provision;

1.2.2 the singular includes the plural and vice versa;

1.2.3 a reference to a person includes an individual and a corporation, partnership, joint venture, association, authority, trust, State or Government and vice versa;

1.2.4 a person includes the legal personal representatives, successors and assigns of that person;

1.2.5 a reference to any gender includes all genders;

1.2.6 a reference to a recital, clause, schedule, annexure, appendix or exhibit is to a recital, clause, schedule, annexure, appendix or exhibit of or to this agreement;

1.2.7 a recital, schedule, annexure, appendix or exhibit or description of the parties forms part of this agreement;

1.2.8 a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;

1.2.9 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;

1.2.10 where an expression is defined anywhere in this agreement it has the same meaning throughout;

1.2.11 a reference to "dollars" or "\$" is to an amount in Australian currency.

1.3 Headings

All headings throughout this agreement have been inserted for the purpose of ease of reference only and will not define, limit or affect the meaning or interpretation of this agreement or of any instrument created pursuant to or in accordance with this agreement.

2 LAW

2.1 This agreement and any Contract made between the parties shall be governed by and construed in accordance with the laws of the State of Queensland and the parties agree to submit to the jurisdiction of the Courts of that State in all matters arising out of this agreement and any Contract made between the parties.

3 FORMATION OF AGREEMENT

3.1 The Customer must accept or reject a Quotation within thirty (30) days of its receipt. The Contractor may, at its option, extend this period by notification in writing to the Customer.

3.2 The Contractor may, at its absolute discretion, and without incurring any liability to the Customer whatsoever, revise or withdraw the Quotation at any time before communication by the Customer to the Contractor of its acceptance of the Quotation in writing.

3.3 The Customer may accept a Quotation by sending to the Contractor a letter acknowledging and agreeing to the terms of the Quotation (an "Order"), or if the Customer acknowledges the agreement by signing and returning a copy of the Quotation to the Contractor.

3.4 The parties will be deemed to have formed a Contract upon the communication by the Customer to the Contractor of its acceptance of the Quotation in writing.

3.5 In the event the Customer provides the Contractor with a written Order, such Order is subject to these terms and conditions of quotation and any other terms and conditions that are agreed by the parties in writing to become part of the Contract.

4 DUTIES OF THE CONTRACTOR

4.1 The Contractor must carry out and complete the Works in the best trade practice and professional manner and in compliance with the terms and provisions of the Contract Documents by the Completion Date.

4.2 The Contractor may employ its Servants or any third party for the purpose of completing the Works provided such person(s) are careful, skilled and experienced in their respective trades or occupations. The Contractor will be solely responsible for any and all payments to any Servant or third party for that part of the Works performed by it.

5 VARIATIONS

5.1 Any person seeking a variation to the Contract shall notify the other party in writing, setting out in full the details of the required changes to the Works.

5.2 A variation document will be prepared by the Contractor which must:

5.2.1 be in writing and signed by both the Customer and the Contractor;

5.2.2 state the scope of the Works which is the subject of the Variation;

5.2.3 where the variation is sought by the Contractor, state the reason for the Variation;

5.2.4 state:-
5.2.4.1 the change in the Price by reason of the Variation, or

5.2.4.2 Where it is not practicable for the parties to state the change in the Price by reason of the Variation, or where no agreement is reached by the Customer and the Contractor as to the value of the variations, then:-

5.2.4.2.1 additions shall be charged at cost (exclusive of GST) plus 10%, plus any and all GST payable with respect to the addition; and

5.2.4.2.2 deletions are to be charged at cost, plus any and all GST payable with respect to the deletion and the Price is to be adjusted accordingly at the next payment made after the commencement of the Works the subject of the Variation;

5.2.5 state the revised Completion Date (if applicable and

practicable).

6 CONTRACTOR'S WARRANTY

6.1 The Contractor warrants that:-

6.1.1 all materials to be supplied for use in the Works:-

6.1.1.1 will be good and, having regard to the generally accepted practices or standards applied in the building industry for the materials or the specifications, instructions or recommendations of manufacturers or suppliers of the materials, will be suitable for the purpose for which they are used and;

6.1.1.2 unless otherwise stated, are new;

6.1.2 the Works will be carried out:-

6.1.2.1 in accordance with all relevant laws and legal requirements, including the Electricity Safety Act 2002, Electrical Safety Regulation 2002 and Electrical Safety Codes of Practice.

6.1.2.2 in an appropriate and skillful way; and

6.1.2.3 with reasonable care and skill;

6.1.3 if applicable, the Provisional Sum has been calculated with reasonable care and skill, having regard to all the information reasonably available when the Contract is entered into (including information about the nature and location of the Site); and

6.1.4 at all times during the currency of the Contract it will hold all licences required to carry out and complete the Works.

6.2 The Contractor does not warrant the quality or performance of any Electrical Equipment supplied or installed by the Contractor. It is the Customer's responsibility to establish the warranty relationship with the manufacturer by ensuring that warranty cards or other registration requirements of the manufacturer of any Electrical Equipment supplied or installed by the Contractor are complied with.

7 PROGRESS PAYMENTS

7.1 The Customer shall pay to the Contractor the Deposit stated in the Schedule upon the signing or acceptance of the Quotation.

7.2 The Customer will pay the Contractor the Price by way of progress payments, calculated in accordance with clause 7.3.

7.3 The Contractor shall submit to the Customer written requests for progress payments upon completion of each stage of the Works which shall be in the form of a proper and valid Tax Invoice, in accordance with the GST Act, and consist of:

7.3.1 The percentage of the Price applicable to that stage as stated in the Quotation; and

7.3.2 Any other amounts then payable to the Contractor under the Contract.

7.4 The Customer must pay the Contractor progress payments in accordance with the written claims supplied by the Contractor in accordance with clause 7.3 within seven (7) days of submission of the progress claim in the form of a proper and valid Tax Invoice by the Contractor.

7.5 Should the Customer neglect or refuse to pay the amount of any progress payment by the due date, then the Contractor may, at its option, with or without notice to the Customer, suspend performance of the Works until such payment has been received in full.

8 INCREASED COSTS

8.1 If, after 30 days from the Customer's acceptance of the Quotation, the Contractor's costs in connection with the Contract are increased as a result of the introduction of new, or changes to existing, government taxes or charges or Prime Cost Items or Provisional Sums then the Price shall be increased to reflect such changes and the Customer shall pay the increased Price to the Contractor in accordance with the provisions of Clause 7.

9 EXCEPTED RISKS

9.1 The Contractor shall not be liable for any delay or failure to perform its obligations under this agreement or any Contract between the parties if such failure or delay results directly or indirectly from any cause, matter or thing beyond the reasonable control of the Contractor, including but not limited to:

9.1.1 any act, default or omission on the part of the Customer, its employees and or agents; or

9.1.2 any events occurring on or before Completion Date including but not limited to:-

9.1.2.1 damage by fire, explosion, earthquake, lightning, storm, flood, acts of God, civil or military authority, public enemy, war, civil commotion, strikes, labour disputes or industrial conditions;

9.1.2.2 electric power supply failure;

9.1.2.3 inclement weather;

9.1.2.4 unavailability of suitable materials or parts;

9.1.2.5 failure of transportation affecting the Contractor, its supplier or any other person company or firm;

9.1.3 Latent conditions;

9.1.4 Variations directed by the customer;

9.1.5 Changes in the law; or

9.1.6 Directions or delays by municipal, public or statutory authorities.

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10 RISK & OWNERSHIP

10.1 Risk of loss, damage or destruction to the materials, equipment and Electrical Equipment or any part thereof shall pass to the Customer on installation.

10.2 In connection with the materials, equipment and Electrical Equipment while they remain the property of the Contractor, the Customer agrees with the Contractor that:

10.2.1 the Customer has no right or claim to any interest in the materials to secure any liquidated or unliquidated debt or obligation the Contractor owes to the Customer;

10.2.2 the Customer cannot claim any lien over the materials;

10.2.3 the Customer will not create any absolute or defeasible interest in the materials in relation to any third party except as may be authorised by the Contractor;

10.2.4 where the Customer is in actual or constructive possession of the materials:

10.2.4.1 the Customer will not deliver them or any document of title to the materials to any person except as directed by the Contractor; and

10.2.4.2 it is in possession of the materials as a bailee of those materials and owes the Contractor the duties and liabilities of a bailee.

10.3 In connection with the materials, the Contractor states to the Customer that:

10.3.1 the Contractor has the right to supply the materials to the Customer;

10.3.2 the activities of the Contractor in supplying the materials do not infringe the rights of the owner of the materials (where the Contractor is not the owner of the materials);

10.3.3 if the materials are not owned by the Contractor, that the Contractor is authorised to supply the materials to the Customer.

10.4 The Contractor and the Customer agree that:

10.4.1 the property of the Contractor in the materials remains with the Contractor until the Contractor has received payment in full of the Price and any other monies due to the Contractor under this agreement or any Contract between the parties;

10.4.2 the Customer is a bailee of the materials until such time as property in them passes to the Customer and that this bailment continues in relation to all of the materials until the Price of the Contract has been paid in full;

10.4.3 pending payment in full of the Price under the Contract, the Customer:

10.4.3.1 must not supply any of the materials to any person;

10.4.3.2 must not allow any person to have or acquire any security interest in the materials;

10.4.3.3 must insure the materials for their full insurable or replacement value (whichever is the higher) with any insurer licenced or authorised to conduct the business of insurance in the place where the Customer carries on business;

10.4.3.4 must not remove, deface or obliterate any identifying plate, mark or number on any of the materials.

10.5 Despite clause 10.3, if the Customer supplies any of the materials to any person before all moneys payable by the Customer have been paid to the Contractor (and have not been claimed or clawed-back by any person standing in the place of or representing the Customer), the Customer agrees that:

10.5.1 it holds the proceeds of re-supply of the materials on trust for and as agent for the Contractor immediately when they are receivable or received;

10.5.2 it must either pay the amount of the proceeds of re-supply to the seller immediately when they are received or pay those proceeds into an account with a bank or financial institution or deposit-taking institution as trustee for the Contractor;

10.5.3 any accessory or item which accedes to any of the materials by an act of the Customer or of any person at the direction or request of the Customer becomes and remains the property of the Contractor until the Contractor is paid in accordance with clause 10.3.1 when the property in the materials (including the accessory) passes to the Customer;

10.5.4 if the Customer fails to pay the Price within the period as stated in the Contract, the Contractor may recover possession of the materials at any site owned, possessed or controlled by the Customer and the Customer agrees that the Contractor has an irrevocable licence to do so and to dispose of the equipment to recover costs if the Customer breaches this agreement or any Contract between the parties.

11 ACCESS

11.1 The Contractor's Quotation is based on a continuous work programme, unless otherwise stated. If the Customer causes the Works to be delayed or delays are caused by any of the events in paragraph 10 herein, then the performance of the Contractor's obligations under this agreement or any Contract between the parties shall be suspended for the period of such delay and the Completion Date shall be extended accordingly.

11.2 Where the Contractor has been granted an extension of time under this clause, the Customer shall pay to the Contractor such extra costs as are necessarily incurred by the Contractor by reason of the delay.

12 PRACTICAL COMPLETION

12.1 The Contractor shall complete the Works to Practical Completion in accordance with this agreement and the Contract on or before the Completion Date (as amended or varied by the terms hereof).

12.2 When, in the opinion of the Contractor, the Works have been completed to a stage of Practical Completion, the Contractor may give the Customer notice thereof.

12.3 Within five (5) days after receipt of such notice, the Customer, if not satisfied that the Works are practically complete, shall give to the Contractor notice of those matters, which the Customer requires to be carried out in order for the Works to reach Practical Completion. If the Customer does not respond by notice within the required time, then the Works shall be deemed to be practically complete without any omissions or defects.

12.4 Upon receipt of a notice from the Customer in accordance with clause 12.3 the Contractor must give the Customer a notice that:-

12.4.1 lists the minor defects and minor omissions that both the Customer and the Contractor agree exist; and

12.4.2 states the date by when the Contractor is to correct the listed defects and omissions; and

12.4.3 lists the minor defects and omissions the Customer claims exist, but that are not agreed by the Contractor to exist; and

12.4.4 is signed by the Contractor

the Contractor may then receive the payment required to be made under the Contract by the Customer to the Contractor for the Practical Completion stage.

12.5 The Contractor must make a reasonable effort to have the Customer sign the notice mentioned and referred to in clause 12.4 to acknowledge its contents.

12.6 If, in the absence of written agreement between the Contractor and the Customer, the Customer takes possession of and/or uses the Works or any part thereof prior to the date of Practical Completion pursuant to this condition, the Works shall be deemed to have been practically completed on the date of commencement of such possession and/or occupancy and/or use.

12.7 The date of Practical Completion shall be the date for commencement of the Defects Liability Period.

13 RETENTION

13.1 If the parties agree in writing that the Customer shall retain retention monies from the Price, then such retention monies shall be limited to 5% of the Price and may be in the form of a Bank Guarantee in lieu of cash at the Contractor's option. Any retention monies, bank guarantees or other forms of retention held by the Customer are to be returned or released to the Contractor on the date of Practical Completion.

14 WORKING HOURS

14.1 All work will be carried out during normal working hours (7.00am-6.00pm Monday to Friday) unless otherwise stated. The Customer agrees that should the Customer require the Contractor to carry out any of the Works outside of the nominated hours, then the Price will be increased to reflect award penalty rates for that part of the Works performed outside of the nominated hours and the Customer shall pay the increased Price to the Contractor in accordance with the provisions of clause 7.

15 DAMAGES

15. Consequential, liquidated or pre ascertained damages are expressly excluded from this Agreement.

16 GST REGISTRATION

16.1 The Contractor warrants that as at the date of this Agreement, the Contractor is registered under the GST Act and that the Contractor is not aware of any circumstances existing which would require the Commissioner of Taxation to cancel the registration.

17 DISPUTE RESOLUTION

17.1 Any dispute between the Customer and the Contractor arising under, or in connection, with this agreement or any Contract between the parties, shall:

17.1.1 In the first instance be referred by one party to the other and the party shall use all reasonable endeavours to resolve the difference or dispute without resort to future process; and

17.1.2 If the difference or dispute cannot be resolved in such a manner within seven (7) days of the difference or dispute arising then it shall be referred to an Expert appointed by agreement between the parties or failing agreement by either:-

17.1.2.1 The Commercial and Consumer Tribunal; or

17.1.2.2 The Electrical and Communications Association if the Contractor is a member of same.

As to that determination:

17.1.2.3 The Expert acts as an expert and not as an arbitrator;

17.1.2.4 The Expert must take written submissions from each party if those submissions are received within the time limit by the Expert;

17.1.2.5 The Expert's decision is final and binding;

17.1.2.6 The Expert is obliged to give reasons;

17.1.2.7 Each party must direct the Expert to provide a decision within seven (7) Business Days of its appointment; and

17.1.2.8 The Expert's costs shall be paid by the party determined

by the Expert to be the party responsible for the payment of the Expert's costs.

18 INSURANCE

18.1 The Contractor shall effect and shall maintain during this Agreement, Public Liability Insurance to a value of not less than \$5,000,000 and WorkCover Insurance in accordance with the requirements of the applicable legislation for all employees.

18.2 The Contractor shall provide if requested by the Customer evidence of the existence of such policies.

19 NOTICES

19.1 Any notice under this Agreement shall be given in writing and delivered to the other party by hand, or alternatively by prepaid post to the address stated in this Agreement or to such other address the party to whom the notice is given may thereafter have notified. Any such notice shall be deemed to have been received two (2) days after the date of posting.

20 TIME CALCULATIONS - DELAYS

20.1 An allowance of _____ days is made in the event of inclement weather during the course of the Works.

20.2 An allowance of _____ days is made for non-working days during the period in which the Works are carried out.

20.3 An allowance of _____ days is made for the carrying out of the Works for the following reasons:

20.4 The Contractor reasonably believes that the carrying out of the Works will be delayed for the following reasons:

20.5 It is not possible for the Contractor to adequately estimate the period of likely delay which will occur (if any) for the reasons set out in the subparagraph above.

20.6 In the event that such delays occur, the Contractor states that the general effect the delays are likely to have on the carrying out of the works is:

21 COOLING OFF PERIOD

21.1 If the Contract is a Regulated Contract, the Customer may withdraw from the Contract under this clause.

21.2 The Customer may withdraw from the Contract within five (5) Business Days after the Receipt Day for the Contract.

21.3 If five (5) Business Days have elapsed since the Contract was entered into and there is no Receipt Day for the contract, the Customer may withdraw from the Contract.

21.4 Nothing in clause 21.3 affects the right of the Customer to withdraw from the Contract under clause 21.2 if a Receipt Day subsequently applies to the Contract.

21.5 Part 6 of the Domestic Building Contracts Act (Qld) applies with respect to the withdrawal from the Contract by the Customer during this cooling off period.

22 SECURITY OF PAYMENT

22.1 The provisions of Clause 22.2 shall apply only to a Customer who is a natural person and shall not apply to a Customer that is a corporation.

22.2 The Customer does hereby agree to charge all of their respective property both real and personal where so ever situated with the amount of monies owed by the Customer to the Contractor herein. As further and better security for the repayment of all money from time to time owing by the Customer to the Contractor the Customer mortgages and charges to and in favour of the Contractor all right, title, estate and interest which the Customer now holds or may hold hereafter acquire and hold in any real or personal property in Australia. The Customer shall, at the request of the Contractor, sign execute and deliver in favour of the Contractor such mortgage or charge over the Customer's real or personal property in registrable form as the Contractor may require, such document or documents incorporating the usual terms, conditions and covenants to protect the interest of the Contractor herein, within 10 days of the Contractor requesting the same of the Customer.

22.3 For the purpose of giving full effect to this agreement and the powers hereby conferred, whilst any monies now or from time to time owing by the Customer to the Contractor, the Customer appoints the Contractor and any of its authorised officers, jointly and each of them severally, the true and lawful attorney and attorneys of the Customer to do anything in the name of the Customer or Contractor which the Customer should do or should have done hereunder and to do all such acts, matters and things (including the execution of any deed, mortgage, bill of sale, charge, share transfer, transfer of land and other documents whatsoever) as such attorney or attorneys may deem expedient for carrying out, or in connection with the exercise of all or any of the rights or powers herein contained or implied to give effect to this agreement or for the enforcement thereof and this power of attorney is deemed irrevocable and given by way of security.

23 CAVEAT

23.1 The provisions of Clause 23.2 shall apply only to a Customer who is not a resident owner for the purposes of the Domestic Building Contracts Act 2000.

23.2 The Customer and the Contractor covenant and agree that the Contractor has a caveatable interest in the land of the Customer for the purposes of the Land Title Act 1994.