

General Conditions – Contract for Electrical Services (Commercial & Industrial)

1. General

1.1. You engage us to complete the Works in accordance with the terms of this Contract for the Contract Sum.

2. Existing Electrical Services

2.1. You warrant to us that any existing electrical services or plant or equipment on the Site or affecting the Site are in good order and comply with all applicable standards, codes and lawful requirements and You indemnify us against any loss or damage we, You or any third party suffers as a consequence of any existing electrical services or plant or equipment on the Site not being in good order and/or not complying with all applicable standards, codes and lawful requirements. Further, You acknowledge that notwithstanding anything in this Contract, unless specifically stated to the contrary in any special conditions or the Quote, we shall not be liable to ensure any existing services or equipment on the Site complies with current requirements or standards prior to or after completion of the Works. We will take reasonable care not to interfere with or damage any services, but the reinstatement of any services cut or damaged by us during the course of the Works, which was not specifically referred to in the Quote, is not included in the Contract Sum.

2.2. If there is any upgrading or renewal of existing electrical installations required in order to undertake the Works (for any reason) which could not have been reasonably foreseen by us at the time of submitting the Quote, then we may give You notice of same and advise You in writing of the estimated cost (including all time related costs, if any) of dealing with same and the effect on the Date for Completion. The Contract Sum and the Date for Completion will be adjusted to reflect the additional cost and time of any additional works required in accordance with this clause. If You dispute our assessment of the effect of this additional work on the Contract Sum or the Date for Completion, either party may refer the issue for determination as a Dispute pursuant to clause 14.

2.3. Notwithstanding anything else in this Contract, we shall not be obligated to undertake any work which is not within our licence and shall not be responsible for any costs, direct or indirect or consequential, of any such work or of the need for it.

3. Access to the Site

3.1. You must allow us such access to the Site as We (in our opinion) require for the purpose of:

- (a) Establishing what is required to affect the Works and prepare the Site prior to the Date for Commencement; and
- (b) Carrying out of the Works.

3.2. If we require access to, or over, any land (other than the Site) for the purposes of carrying out the Works, then You shall be responsible for obtaining such access.

3.3. The Contract Sum is based on all Works being carried out in our ordinary business

hours and no allowance has been made for out-of-hours work and is based on a continuous and linear works program and if circumstances beyond our immediate control cause (in our opinion) the Works to be delayed or cause (in our opinion) our access to the Site to be (in our opinion) inhibited, we may, by written notice to You, suspend the carrying out of our obligations under this Contract.

4. Subcontracting

4.1. We may subcontract the performance of any part of the Works.

5. Abnormal Site Conditions

5.1. The Contract Sum does not include any allowance for dealing with Abnormal Site Conditions.

5.2. In the event of Abnormal Site Conditions, we may give You notice of the Abnormal Site Conditions and advise You in writing of the cost (including all time related costs, if any) involved in the affecting the Works and any additional time required to effect the Works given the Abnormal Site Conditions, and the effect on the Date for Completion. The Contract Sum and the Date for Completion will be adjusted to reflect the additional cost and time arising out of any Abnormal Site Conditions determined in accordance with this clause.

5.3. If You dispute our assessment of the effect of the Abnormal Site Conditions on the Contract Sum or the Date for Completion, either party may refer the issue for determination as a Dispute pursuant to clause 14.

5.4. Regardless of whether You agree to a Variation, we shall nevertheless be entitled to vary the Works and to payment for any such Variation which is necessary because of any buildability issue, safety issue, required by Law or any government authority or the like, or circumstances that could not have been reasonably foreseen by us when the Contract was entered into such as, by way of example only and without limitation, a Latent Condition, an existing electrical installation being other than we ought reasonably have expected (for example but without limitation, the existing electrical installation being not in adequate condition and/or not complying with minimum current regulations) or a requirement of a local or other authority or utility.

6. Variation to the Works

6.1. We shall not vary the Works except when directed in writing by You or in accordance with clause 5.4.

6.2. You may, at any time, direct a Variation to the Works by written notice to us to carry out additional work. Within ten (10) Business Days of receiving notice of a Variation, we may advise You in writing of the cost (including all time related costs, if any) of carrying out the Variation, and the effect on the Date for Completion. The Contract Sum will be adjusted to reflect the additional cost of any Variation determined in accordance with this clause and the Date for Completion shall be extended to reflect the effect of the Variation on the time it takes us complete the Works.

6.3. If You dispute our assessment of the effect of the Variation on the Contract Sum or the Date for Completion, either party may refer the issue for determination as a Dispute pursuant to clause 14.

7. Warranties and obligations of the parties

7.1. You warrant to us that You will, at Your cost and expense:

- (a) Arrange for the removal of or any dealing with any asbestos or other hazardous material on the Site;
- (b) Conduct any survey of the Works necessary to establish that the Works have been completed in accordance with the Contract;
- (c) Pay any security or deposit payable with respect to the Works (for example, any payment required to be made to any local authority or utility);
- (d) Arrange or separately engage us at additional cost, to connect and/or reinstate as necessary any Unidentified Services which were interfered with or interrupted in the course of effecting the Works;
- (e) Provide us with all the reasonably necessary documentation as required to carry out the Works;
- (f) Provide us with access to the Site and parking for any vehicles required by us to be at the Site or for the purpose of moving goods and equipment to and from the Site; and
- (g) Promptly notify us if You become aware of any occurrence or incident which will have a material impact on our performance of our obligations under this Contract.

7.2. You must comply with Your obligations at Law relating to occupational health and safety and to our reasonable satisfaction.

7.3. To the extent required by Law, the Contractor warrants that:

- (a) The Works will be carried out in an appropriate and skilful way and with reasonable care and skill and reasonable diligence;
- (b) All materials supplied will be of good quality and suitable for the purpose for which they are used, and that all materials used will be new unless this Contract expressly provides otherwise; and
- (c) The Works will be carried out in accordance with all Laws.

Each party acknowledges that the other has entered into this Contract in reliance on the representations and warranties that they have made to the other party in this Contract.

8. Time

8.1. We must use all reasonable endeavours, subject to any other provision in this Contract, to complete the Works on or before the Date for Completion.

8.2. We may provide written notice to You if we are likely to be delayed in carrying out the Works or have been delayed and we may provide such notice at any time including after Completion.

8.3. You will grant us an extension of time for carrying out the Works (including reaching Completion) for such period as is reasonable, if:

(a) We are or will be delayed in completing the Works due to a Qualifying Cause of Delay; and

(b) We give You a written claim for an extension of time (whether before or after Completion).

8.4. Upon receiving a claim in accordance with clause 8.3(b) from us, You shall assess the claim for an extension of time and provide notice to us of its assessment within five (5) Business Days.

8.5. If You not comply with clause 8.4, we shall be entitled to the full extension of time set out in the claim which was delivered in accordance with clause 8.3(b). In the event we do not accept Your assessment with respect to the claim for an extension of time, we may, within ten (10) Business Days, refer this matter for determination as a Dispute pursuant to clause 14.

8.6. For the sake of clarity, if we are delayed in carrying out the Works by a Qualifying Cause of Delay, we are entitled to make a claim for delay, acceleration or disruption costs whether or not an extension of time is granted under this Contract and may do so at any time, including after Completion. The failure by us to strictly comply with any of the obligations contained in this clause 8 shall not invalidate any claim for a Variation.

9. Suspension

9.1. We may suspend the performance of the Works if You are in breach of the Contract and if You have not remedied the breach despite service of a notice pursuant to clause 13.1 by us upon You or when the performance of the Works is or may, in our reasonable opinion, be delayed because of any epidemic, pandemic or dealing with the impact of, or the potential impact of, any outbreak of disease, illness, epidemic or pandemic or any government regulation or order in relation to such a matter.

9.2. Any costs or expenses incurred by us as a result of a suspension of the performance of the Works under this clause 9 or of its being required to comply with this clause 9 (in general) shall be added to the Contract Sum.

9.3. In the case of a suspension of the Works initiated by us pursuant to clause 9.1, We may, when the cause of the suspension no longer exists, give You notice of that fact and we must then recommence the carrying out of the Works as soon as reasonably practicable after giving the notice.

10. Completion of the Works

10.1. When We consider that the Works have reached Completion, We will notify You that in our opinion the Works have reached Completion, and a joint inspection of the Works will be carried out by You and us.

11. Prices and payment

11.1. You must pay us the Contract Sum calculated and adjusted as provided by the Contract, as follows:

(a) pay the Deposit (if any) upon acceptance of the Quote;

(b) pay each progress claim (if the Quote

provides for progress payments or Stage Payments) within 5 business days of receiving a Valid Tax Invoice for each claim. Where progress claims or claims for Stage Payments are made, each claim shall be calculated in accordance with any provisions relating to progress claims or Stage Payment (as the case may be) in the Quote, adjusted in accordance with this Contract; and pay our claim for payment upon Completion within 5 business days of receiving a Valid Tax Invoice when the Works have reached Completion.

11.2. You will, without set-off or deduction, pay us the amount set out in the relevant Valid Tax Invoice by the Payment Time.

11.3. If the Payment Time has passed, and the amount set out in a Valid Tax Invoice, or part thereof, remains unpaid (the Overdue Amount) THEN for the period for which the Overdue Amount is still unpaid after the Payment Time, You are also required to pay to us interest on the Overdue Amount at the rate of five percent (5%) per annum, calculated on monthly rests and at our election, capitalised at the end of each month, for each day the amount is unpaid.

11.4. Payment of a Valid Tax Invoice or any part thereof, will constitute acceptance by You that all of the Works which are referred to in the Valid Tax Invoice have been completed strictly in accordance with the terms of this Contract.

11.5. You shall not be entitled to set-off against any amount due and owing to us any moneys due or which may become due from us to You, either pursuant to this Contract or otherwise.

11.6. In the event that We, in carrying out any part of the Works, carry out work for which we are required to hold a particular type of licence and we do not hold that type of licence or any part of the Works is beyond the scope of our licence (**Additional Work**), the parties agree that the value of the Additional Work is Nil and that the entire Contract Sum relates solely to those parts of the Works for which We are licensed (where a licence is required) or for which we do not require a licence.

11.7. The Contract Sum does not include any cost of metering or connection charges, all of which are payable by You unless specifically stated as being included in the Contract Sum, in the Quote.

12. Taxes

12.1. If any supply made under this Contract is, or becomes, subject to GST, the party to whom the supply is made (**Recipient**) must pay to the party making the supply (**Provider**), as consideration, in addition to any consideration payable or to be provided elsewhere in this Contract, subject to issuing a Valid Tax Invoice, an additional amount on account of GST, such amount to be calculated by multiplying the consideration by the applicable rate of GST.

12.2. Any amount in respect of GST payable must be paid by the Recipient to the Provider at the same time as the consideration to which it relates is paid.

13. Default and termination

13.1. If a party commits a breach of this Contract, the party not in breach may give the

breaching party a notice requiring it to rectify the breach. Such notice must specify:

(a) Details of the breach; and

(b) A time by which the breach must be rectified (subject to clause 13.2, this time must be at least ten (10) Business Days after the date of the notice).

13.2. For the purposes of clause 13.1, the failure by You to pay an amount to us by the due date for payment shall amount to a substantial breach of the Contract and if We give you a notice in relation to that breach pursuant to clause 13.1, the time by which the breach must be rectified will be (5) Business Days after the date of the notice and if payment is not received within that time, the amount so due shall be a debt owing to us by You and in the event We institute court proceedings to recover that debt, You shall not defend those proceedings or enter any defence or make any counter-claim therein.

13.3. If the breach is not rectified within the time specified in the notice, the party not in breach may (in addition to any other right given under this Contract) terminate this Contract, by notice to the other party.

13.4. Either party may immediately terminate this Contract by notice to the other party if a party becomes subject to an Insolvency Event.

13.5. If the Contract is terminated pursuant to this clause 13, the rights of the parties shall be the same as if the party in breach had repudiated the contract and the party which is not in breach had elected to terminate the Contract.

13.6. Without limiting the above, the provisions relating to indemnity and governing law and jurisdiction survive termination of this Contract until each of those obligations have been completely discharged.

13.7. Notwithstanding anything else in this Contract, at Law or in equity, under no circumstances shall We be liable for Consequential Loss and, our maximum and overall liability to You will never exceed the Limitation Cap.

14. Dispute Resolution

14.1. If a difference or dispute (together called a Dispute) between the parties arises in connection with the subject matter of the Contract, including a dispute concerning a direction from You or a claim available under the law governing the Contract, then either party may give the other a written notice of dispute adequately identifying and providing details of the Dispute.

14.2. Notwithstanding the existence of a Dispute, the parties shall continue to perform the Contract.

14.3. Within five (5) Business Days after receiving a notice of dispute, the parties shall meet at least once to resolve the Dispute. At this meeting each party shall be represented by a person having authority to agree to such resolution. All aspects of every such conference except the fact of occurrence shall be privileged.

14.4. If the Dispute is not resolved by the parties, either party may commence proceedings for the resolution of the Dispute.

14.5. Nothing in this clause shall prevent a party from commencing proceedings to enforce a right to payment or to obtain urgent relief, injunctive relief, or declaratory relief.

15. Notices

15.1. Any notice, demand, consent or other communication to be given under this Contract must be given in writing to the recipient at the Address listed in Contract Documents.

(a) Any notice, demand, consent or other communication to be given under this Contract shall be deemed duly given if given in writing and:

(b) If delivered by hand, when left at the address of the party;

(c) If sent by pre-paid post, on the 5th day following the date of postage;

(d) If given by facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the recipient's facsimile number, unless the recipient informs the sender that the transmission is illegible or incomplete within four (4) hours of it being transmitted; and

(e) if sent by email, at the time shown in the delivery confirmation report generated by the sender's email system (unless an answerback code is received by the sender which indicates the email transmission has not been successful). Notices of dispute, termination or default given under this Contract must not be sent by email.

16. Title to Materials and equipment

16.1. You have no right or interest in any materials or equipment brought onto the site by us or any agent or supplier of ours (**Materials**) and shall not be entitled to claim any lien over or security interest in any such Materials nor deliver any of it to any third party or otherwise deal with such Materials except with our written authority.

16.2. In the event that You are in possession of any Materials You shall hold the Materials as bailee for us and owe the duties and liabilities of a bailee to us.

16.3. To the extent any action or transaction under this Contract creates or we claim a Security Interest over any Materials or other property whether of ours or another person on the Site or elsewhere pursuant to the *Personal Property Securities Act 2009 (Cth)* (**PPSA**), except to the extent prohibited by Law, You shall do anything requested of You by us to enable us to register such interest, will provide all reasonable assistance to enable such registration and to ensure our Security Interest is perfected and otherwise enforceable under the PPSA, with first priority (where possible). You agree that if Chapter 4 of the PPSA applies to the enforcement of any such Security Interest, to the maximum extent permitted by law, sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132(3), 132(4), 134(1), 135, 142 and 143 of the PPSA, will not apply to the enforcement of that Security Interest and You waive Your right to receive any notice under the PPSA so far as is permitted at law.

16.4. Title in the Materials will only pass to You after all moneys payable or which might become payable under this Contract to us have been paid in full.

16.5. In support of the Contractor's rights under this Contract, You hereby charge all Your real and personal property with any amounts which are or may become owing to the Contractor under this Contract from time to time and shall sign any security or related documents requested by the Contractor to give effect to the charge hereby created and appoint the Contractor as Your attorney to sign any documents for that purpose or a related purpose, such as registration of a charger other encumbrance on or over your real or personal property if You fail to do so within a reasonable time.

17. Guarantor – Guarantee and Indemnity

17.1. The Guarantor guarantees the performance of Your obligations under this Contract and indemnifies us against any loss or damage we might suffer as a consequence of You failing to perform any of Your obligations and/or discharge any of Your liabilities under this Contract.

17.2. In support of the Contractor's rights under this Contract, the Guarantor hereby charges all the Guarantor's real and personal property with any amounts which are or may become owing to the Contractor under this Contract by the Guarantor or You/the Client from time to time and shall sign any security or related documents requested by the Contractor to give effect to the charge hereby created and appoint the Contractor as the Guarantor's attorney to sign any documents for that purpose or a related purpose, such as registration of a charger other encumbrance on or over the Guarantor's real or personal property if the Guarantor fails to do so within a reasonable time.

18. Severability

If any provision in this Contract is voidable or unenforceable that provision will be severed and the rest of the Contract will remain in full force and effect

19. Definitions and Interpretation

19.1. In this Contract, unless the context otherwise requires, the below terms will have the following meanings::

Abnormal Site Conditions means any Latent Condition or any physical conditions on or about the Site (including the physical condition or performance of any existing electrical installation or other part of the built environment such as structures or improvements on the Site) and its near surrounds, including wet weather or inclement conditions preventing us from executing the Works as we had programmed for more than 4 continuous hours on each occasion, and artificial things which differ materially from the physical conditions which should reasonably have been anticipated by a competent contractor as at the Date for Commencement and specifically includes existing electrical installations which are encountered in the course of the carrying out of the Works (or prior thereto) which are not in an adequate condition and/ or do not comply with minimum current

regulations, codes or standards, necessitating work to ensure the necessary parts of the existing installation do comply with current regulations, codes and standards, being work beyond that which was allowed for in the Quote and when we priced the Works and which ought reasonably to have been anticipated by us; also including the preparation of the Site so that it is ready and in a suitable condition for the Works to be undertaken; and further including access conditions which are encountered in the course of the carrying out of the Works which substantially increase the time and/ or costs involved in installation at the Site or which otherwise impedes or delays construction of the Works or any part thereof including but not limited to restricted space or obstruction.

Business Days means those days which are not Saturdays, Sundays, Public Holidays in the Place where the Works are to be undertaken and 22 December through to and including 10 January in each year.

Completion means that stage in the execution of the Works when:

- the Works comply with the requirements of this Contract except for minor omissions and minor defects;
- the Works are available for immediate use;
- all of the inspections and tests required under this Contract have been satisfactorily completed;
- all required manufacturers' and subcontractors' warranties have been provided to You; and
- all relevant authorisations have been received by us from the relevant authorities and/or You, as the case may be; and
- all surplus materials, plant and equipment have been removed from the Site.

Contract means this contract, and which is comprised of the Contract Documents.

Contract Documents includes the Quote, the Formal Instrument of Agreement (if one has been given to You), and these General Conditions.

Contract Sum means the amount specified in the Quote or which can be calculated by reference to the Quote, for example but without limitation, by reference to a Schedule of Rates in the Schedule (if any), as adjusted in accordance with this Contract.

Consequential Loss means any special or indirect loss or damage and any loss or profits, loss or production, loss or revenue, loss of use, loss of contract, loss of goodwill, loss of opportunity or wasted overheads, whatsoever, whether direct or indirect.

Date for Commencement means the date advised by us to You to be the date upon which the Works will commence.

Date for Completion means the date advised by us to You to be the date upon which the Works will be completed.

Deposit means the deposit amount specified in the Quote (if any).

GST has the same meaning as in the GST Law.

GST Law has the same meaning as 'GST law' in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Guarantor means the person or entity named in the if any, and/or any person who has communicated in writing (including via electronic means such as email or text message) to us their intention to guarantee the performance of Your obligations under this Contract.

Health Emergency means a public health emergency within the meaning of section 315 of the *Public Health Act 2005 (QLD)* and equivalent or analogous provisions in other jurisdictions and/or any similar emergency or state of affairs declared or existing whether in the jurisdiction applicable to this Contract or elsewhere, including overseas, which impacts on our ability to perform the Works including but not limited to, the time within which the Works can be performed or the manner in which We are required to perform the Works.

Insolvency Event means, in the case of a body corporate, any of the following:

- An administrator of the body corporate being appointed under the Corporations Act;
- The body corporate or a subsidiary executing a deed of company arrangement otherwise than for the purpose of an amalgamation or reconstruction;
- The entry by the body corporate into a scheme of arrangement or a composition with, or assignment for the benefit of, all or any class of its creditors, or a moratorium involving any of them, otherwise than for the purpose of an amalgamation or reconstruction;
- The body corporate being insolvent within the meaning of section 95A(2) of the Corporations Act; The appointment of a receiver or receiver and manager in respect of the body corporate or any part of its property;
- The making of a winding up order, or the passing of, or attempted passing of, a resolution for winding up, except for the purposes of reconstruction or amalgamation;
- An application being made (which is not dismissed within ten (10) Business Days) for an order, a resolution being passed or proposed, a meeting being convened or any other action being taken to cause anything described above, other than for the purposes of an amalgamation or reconstruction; or
- Anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction; and
- In the case of You, the appointment of a small business restructuring practitioner under the Corporations Act.
- In the case of a person other than a body corporate, it means any of the following:
 - The bankruptcy of the person concerned;
 - The appointment of an official manager

in respect of all or any part of the property of the person concerned;

- The entry by the person concerned into a scheme of arrangement or a composition with, or assignment for the benefit of, all or any class of its creditors, or a moratorium involving any of them;
- The person concerned being or stating that he or she is unable to pay his or her debts as and when they fall due;
- An application being made (which is not dismissed within ten (10) Business Days) for an order, a resolution being passed or proposed, a meeting being convened or any other action being taken to cause anything described above; or
- Anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction.

Latent Condition physical conditions on or about the Site (including the physical condition or performance of any existing works, electrical installations, structures or improvements on the Site) and its near surrounds, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by a competent Contractor as at the Date for Commencement if we had inspected:

- the Site and its near surrounds; and
- all information which we had about the matters in the previous paragraph.

Limitation Cap means 5% of the Contract Sum.

Payment Time in relation to a Valid Tax Invoice means five (5) Business Days after receipt.

Qualifying Cause of Delay means:

- any act, default or omission of You, Your consultants, agents or other contractors (not being employed by You);
- a failure of You to provide access in accordance with clause 3.1;
- a suspension of the carrying out of the Works in accordance with clause 3.2;
- a Variation;
- a change in law;
- an industrial dispute;
- Abnormal Site Conditions;
- a suspension of the Works directed pursuant to clause 9.1;
- a Health Emergency, a declared epidemic or pandemic in the place where the Works are to be effected or where We operate our business and any other outbreak of disease, illness, epidemic or pandemic or any government regulation or order in relation to such a matter which adversely affects our ability to undertake the Works including by causing or contributing to any delay or which threatens to do so; or
- wet or inclement weather which delays us in the execution of the Works for more than 4 continuous hours per occasion; and

- any matter outside of our immediate control.

Quote means the quotation referred to in the Instrument of Agreement or which is attached to these conditions or which incorporates these conditions.

Schedule of Rates means the schedule of rates for charges incurred by You upon performance of the Works by the Contractor, calculated as set out in the Quote.

Scope of Work means the scope of work to be carried out by us set out in (or attached to) the Quote.

Security Interest has the meaning given to that term in the *Personal Property Securities Act 2009 (Cth)*.

Site means the area nominated by You for the carrying out of the Works.

Stage Payment means a schedule instalment of the Contract Sum payable upon completion of a specified stage of construction of the Works or on a specified date (not necessarily of a regular or equal amount but as may, for example, be provided in the Quote).

Unidentified Services means services on the Site or on land contiguous with the Site which were not expressly identified on a plan or drawing provided to us prior to the issue of the Quote.

You or Your or Client means the person or entity engaging the services of the Contractor pursuant to this Contract.

Valid Tax Invoice means an invoice, which complies with the GST Law relating to the production and form of tax invoices for GST purposes.

Variation means any increase or decrease in the Works, any omission from the Works, any change in the character or quality of the Works or any additional work in accordance with this Contract.

Works means all of the goods to be supplied and services to be performed by us under the Contract, including the supply of goods and services set out in any Scope of Work and any Variations thereto.

19.2. In these General Conditions:

- (a) The singular includes the plural and vice versa;
- (b) A person includes a firm, body corporate, unincorporated association or authority and reference to a person includes their executors, administrators, successors and assigns;
- (c) A reference to '\$' is a reference to Australian Currency;
- (d) 'Including' and similar expressions are not words of limitation;
- (e) 'Us', 'us', 'we' or 'our' means the Contractor; and
- (f) 'You' 'Your' or 'the Client' means the party accepting the Quote, who by their acceptance of the Quote is engaging Us to complete the Works in accordance with the terms of this Contract.