



ADAM BIRD ELECTRICAL

REC NO: 17617

GENERAL TERMS & CONDITIONS OF ELECTRICAL INSTALLATION CONTRACT

1. Definition and Duration

These conditions form part of a quote submitted by the Contractor to the Client named in the quotation. The Contractor will carry out "the Works" described in this quotation for "the contract sum", which may be varied following to these conditions. This quotation may only be accepted by written notice to the contractor within thirty days from the date of the quotation and, if not so accepted, the contractor reserves the right to revise it.

2. The Contract

2.1 Upon acceptance of this quotation, a binding contract ("the contract") shall be created between the contractor and the client solely on these terms contained herein, including the terms contained in the contractor's quotation.

2.2 The client has represented ability and capacity to pay for the works to be completed and must provide a suitable guarantee for payment if requested by the contractor.

2.3 No change in the terms of the contract shall be effective unless agreed in writing by the contractor. The waiver by the contractor of a term or a breach of any of these terms shall not be deemed to be a waiver of any other term or any subsequent breach of that or any other term.

3. Terms of Payment

3.1 Progress payment - The contractor shall submit monthly progress claims on a day nominated by the contractor in respect of both those identifiable parts of the works completed by the contractor and any identifiable unfixed materials and/or goods intended for the works and stored by the contractor and the client shall provide a payment schedule within 7 working days after submission and shall pay the amount of any progress claim within 7 days of its date unless otherwise agreed.

3.2 Lump sum payment - The client, shall upon completion of the contracted works, pay the total contracted sum in full within seven 7 days of receipt of invoice, less any deposit paid.

4. Work Schedule

4.1 At the time of acceptance of this quotation, the client shall submit to the contractor the proposed work schedule for the execution of the works. If the contractor agrees to the work schedule, it shall form part of the contract and shall not be varied except in accordance with these terms. If a work schedule is not submitted or agreed upon, the contractor shall complete the works within a time which is reasonable in all circumstances.

4.2 Within fourteen (14) days after acceptance of this quotation (or as otherwise agreed), the client shall give the contractor possession of sufficient site to enable the works to commence. Thereafter the client shall give the contractor possession of further parts of the site as and when required by the contractor to enable the contractor to execute works in accordance with the contract.

4.3 If execution of the works by the contractor is interrupted or delayed because the client fails to adhere to the agreed work schedule:

- (a) the client shall not be entitled to defer payment of progress claims for goods manufactured or procured, or work done, by the contractor in conformity with the agreed work schedule;
- (b) the contractor shall be entitled to add to the contract sum a storage charge equivalent to 1.5% per month of the value of goods procured or manufactured in conformity with the agreed work schedule;
- (c) the contractor shall be entitled to add to the contract sum the amount of any additional costs in materials, labour and overheads incurred by reason of such delay or interruption, and a reasonable allowance for profit margins; and
- (d) The contractor shall be entitled to a reasonable extension of time to complete the works.

5. Cost Adjustment

If the works are completed within 3 months after acceptance of this quotation, then no cost adjustment shall apply. But if the works are not completed within that period, then each claim for payment submitted thereafter shall be subject to adjustment for rise and fall in the costs of labour and materials, calculated on the proven costs of labour and material increases or decreases.

6. Extension of Time

6.1 If the contractor is delayed in the execution of the works due to any cause beyond his control (including, but not limited to, natural disasters, strikes, lockouts or other industrial disturbances, fire, flood, explosion and laws, rules, regulations or orders of any Government authority or delays caused by any other person, company or authority), the contractor shall be entitled to a reasonable extension of time to complete the works while such cause exists and the provisions of Clause 5 shall apply.

6.2 If any such cause continues for 6 months or more, either party may by notice in writing to the other terminate the contract. The termination of the contract shall not affect the rights and obligations of either party which accrued prior to such termination.

7. Materials, Details and Dimensions

7.1 The client before accepting this quotation acknowledges that adequate care has been taken to ensure that the materials and articles specified are of the correct type, size, rating, standard, quality, colour, finish and express the full requirements and conform to the specification and drawings against which the quotation was submitted.

7.2 The client warrants, in respect of plant equipment and fittings supplied and to which the contractor is required to connect its works, will conform with relevant Australian Standards and to local statutory requirements.

7.3 The client shall provide the contractor with all necessary dimensions and locations in adequate time to enable the contractor to carry out and complete the works in accordance with the contract.

7.4 When reasonably requested to do so, the contractor will provide workshop drawings showing designs and details proposed for the works and the client shall accept in writing such designs and details, suitably amended if need be, before the contractor commences the works. Such acceptance shall form part of the contract.

8. Excavations

This contract is based on any excavation required in performance of the works being in soil or clay and free of rock. The client acknowledges that should it be necessary for the contractor to excavate in other material, including but not limited to rock and shale, then the client will pay to the contractor a reasonable extra price.

9. Existing Underground Services

9.1 This contract is based on the contractor being permitted to excavate by machine for the installation of such underground electrical services as are included in the works. If the client requires the contractor to excavate by hand, then the contractor shall be paid for this work at a reasonable extra price.

9.2 If within a reasonable time before the works are commenced on the site, the client informs the contractor of the presence, nature of location of underground services on the site, the contractor shall, at no cost to the client, make good any damage which he may cause to such services.

9.3 If the client does not inform the contractor (as required by Clause 9.2), the client shall indemnify the contractor against any loss, damage or expense, of whatsoever nature incurred in making good any loss or damage that the contractor may cause to the underground services as mentioned in clause 9.2.

10. Asbestos and Other Toxic Substances

This contract is conditional upon the site of the works being free from asbestos and other toxic substances and should asbestos or other toxic substances be discovered then the client shall accept full responsibility for the resolution of any problems arising and shall add to the contract sum an amount equal to any costs necessarily incurred by the contractor as a consequence of such problems.

11. Safety

The client shall ensure that whilst the contractor is required to work on the site of the works such site is maintained as a place of work which complies with the Occupational Health and Safety Regulations 2017 and should the client fail to do so and thereby cause the contractor to incur costs, then such costs shall be added to the contract sum.

12. Finished Surfaces

Unless agreed otherwise, the client shall make good all finished surfaces, including but not limited to ceiling tiles and panels, face brickwork and rendered masonry surfaces, which the contractor may reasonably have to break into or disturb in performance of the works.

13. Variations

13.1 If the client requests any variation in the works during the contract, including but not limited to any variation in materials or dimensions, or variations arising from inaccuracies in Bills of Quantities or other documents supplied to the contractor for quotation purposes, the contractor shall, in accepting the variation, be entitled to increase or decrease the contract sum to take account of the costs of such variation, as the case requires (including an allowance for materials already manufactured or procured, or work already done, but not required) and shall be entitled to a reasonable extension of time to complete the works, as varied.

13.2 If the cost to the contractor of carrying out, or having carried out, the works increases or decreases because of changes in statutory, government or semi-government charges, taxes, rates, levies or imposts with respect to the contractor or the works or changes in currency exchange rates, the contract sum shall be increased or decreased to the extent of such changed costs.

13.3 If the client's employees or any other employees employed on the site of the works receive any allowance in excess of those provided in relevant awards, including but not limited to site allowance and severance pay and the contractor is obliged to make a similar allowance to their employees or subcontractors, the cost of such allowance together with all statutory charges which it attracts, plus a 20% administration fee, shall be added to the contract sum.

13.4 Where extra cost in materials, labour and overhead is occasioned to the contractor by virtue of acceleration of the agreed work schedule or of the presence of obstructions or conditions which could not reasonably have been anticipated by the contractor, it shall be added to the contract sum.

13.5 The client agrees that it will respond to the contractor's claims for variations reasonably and promptly and that should it either fail to accept any claim for a variation from the contractor within seven (7) working days of receiving it or fail within the same period to give to the contractor in writing a reasonable explanation for not accepting such claim, then the amount of such claim shall be added to the contract sum.

14. Working Hours

The contract is based on the contractor performing the works at ordinary time rates of pay for labour and on thirty eight (38) hour working weeks and should the client require the contractor to work at times which will oblige the contractor to pay labour at rates in excess of ordinary time rates of pay, then the cost of such statutory changes, shall be added to the contract sum.

15. Inclement Weather

The contract is based on all employees of the contractor who work on the site of the works under the Electrical, Electronic and Communications Contracting Award 2010, being able to work a full 38 hours per week under the terms of such Award, irrespective of weather conditions, and should such employees be unable to work a full 38 hours per week due solely to the advent of inclement weather, then the cost to the contractor of employing such employees whilst they are unable to work, due solely to the advent of inclement weather, shall be added to the contract sum.

16. Supply Authority

Supply Authority and Statutory Authority Charges, unless declared elsewhere as having been provided for, then the cost to the contractor of charges in connection with the works, which are levied by Distribution Network Supply Providers (DNSP) or other Statutory Authorities, shall be added to the contract sum.

17. Handover

17.1 Subject to Clause 17.2, the contractor shall hand over sections of the works as and when installed to the client's representative on site. The client shall accept such sections and such sections shall thereafter be at the client's risk and be deemed to be practically complete.

17.2 If the client requests that the contractor cease or defer work on a section of the works prior to its installation, the contractor shall hand over that section of the works to the client's representative on site. The client shall accept that section as if installed and that section shall thereafter be at the client's risk and be deemed to be practically complete.

17.3 If the client has paid for the works or a section of the works prior to handover, the property in the works or that section shall pass to the client upon its acceptance by the client. In all other circumstances, property shall remain that of the contractor until payment in full for the works or that section of the works has been received by the contractor.

18. Retention of Title

Until payment in full is received by the contractor and property in the works or a section of the works passes to the client, the client shall hold the works or the unpaid section as Bailee for the contractor. However the client may sell any of the works in the ordinary course of its business on condition that should the contractor so require, the client will assign to the contractor its rights in respect of the sale price.

19. Care of Materials

If the contractor notifies the client that it intends to store on the site materials and articles to be used in the works or constructional plant, equipment or tools to be used in performance of the works, the client shall designate an area for storage and shall take all reasonable precautions to protect any such materials, articles, constructional plant, equipment or tools stored on site from destruction, damage or theft. If they are destroyed, damaged or stolen, the cost of replacement shall be added to the contract sum.

20. On-Site Service

20.1 Those on-site services listed in the attached schedule which are reasonably required by the contractor for execution of the works and annotated accordingly shall be provided by the client at no expense to the contractor.

20.2 On-site services provided by the client shall comply with all statutes regulations and by-laws.

21. Cleaning

21.1 The contractor shall leave the works cleaned by removing any dirt and marks attributable to its activities.

21.2 Rubbish generated by the contractor shall be deposited in one area only per floor as designated by the client and shall be removed at no cost to the contractor.

22. Commissioning

Unless otherwise agreed in writing, the contractor's responsibilities in respect of commissioning the works shall be limited to proving conformance of the works with any specification supplied by the client.

23. Claims against the Contractor

23.1 Any claim which the client may have against the contractor shall be deemed to be waived if not made in writing within ten (10) working days from the date of the event giving rise to such claim.

23.2 The contractor shall not be liable for any damage to materials or the works caused by the client or third parties.

23.3 Unless otherwise agreed in writing, the contractor shall not be liable to pay pre-ascertained or liquidated damages.

23.4 The contractor will not accept the return of, or give credit for, any goods supplied in accordance with the contract.

23.5 The contractor shall not be liable for any delay caused in consequence of proceedings being taken or threatened by, or disputes with, adjoining or neighbouring landowners and the provisions of Clauses 5 and 6 shall apply.

24. Warranties

24.1 The contractor warrants that all materials and workmanship comprising the works, shall conform with the current edition of the AS/NZS 3000 Wiring Rules and the requirements of any authority regulating the supply and use of electricity or electrical installations in force on the date of the performance of the works.

24.2 The contractor will rectify any defects in materials or workmanship of the contractor appearing in any section of the works within 12 months of the date of handover of that section.

24.3 Where any warranty has been given by a third party in respect of materials and workmanship supplied by that third party to the contractor and incorporated in the works, and such warranty imposes less obligations on the third party than those imposed on the contractor by Clause 24.2 the contractor shall give a like warranty to the client, which shall apply to such materials or workmanship to the exclusion of Clause 24.2

24.4 Any defects appearing in the works, caused by the use by the client or any third party of faulty materials or workmanship, or attributable to the activities of other trades, structural loads, vandalism or maltreatment, are excluded from the provisions of Clause 24.2

24.5 Such warranties are conditional on regular maintenance being carried out in accordance with the manufacturers' specifications.

25. Limitation of Liability

25.1 The contractor shall not be liable in contract or in tort or otherwise arising, or any consequential, special or contingent damages which may be claimed to have resulted from the contractor's failure to perform any obligation under the contract.

25.2 Notwithstanding anything to the contrary, in no circumstances whatsoever shall the contractor be liable in contract or in tort or otherwise, for loss, expense or damages incurred, sustained or suffered by the client in an amount exceeding 10% in monetary value of the contract sum.

26. Insurance

26.1 Workers' Compensation and Public Liability insurance shall be effected by the contractor in relation to and during the currency of the works. Such insurance shall cover the contractor's interest only.

27. Default

The contractor may suspend the works, or terminate the contract and repossess any unfixed portions of the works, not yet paid for by the client. If the client either fails to perform or observe any term of the contract (including the terms of payment), or enters into an agreement or 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 or official manager or administrator appointed for all or any part of its assets. Such suspension or termination shall not affect any rights of the contractor accrued against the client. The contractor shall be entitled to be reimbursed for any loss or damage sustained as a result of the default of the client, including any loss sustained through the suspension and subsequent resumption of the works.

28. Cancellation

If the client requests cancellation of the contract, he/she shall pay for work done pursuant to the contract to the date of such request and shall pay the contractor compensation for all losses (including consequential losses, lost profits and the loss of prospective profits) suffered by it as a result of such cancellation.

29. Confidentiality

The client shall keep secret and confidential and shall not disclose to any third party without the prior written consent of the contractor any information, data, specification, drawings, reports, accounts or other documents and things supplied or made available by the contractor to the client or brought into existence by the contractor for the purpose of performance of the works set out herein and the client shall take or cause to be taken such reasonable precautions as may be necessary to maintain secrecy and confidentiality and prevent disclosure, including obtaining confidentiality agreements from its employees, agents and subcontractors.

30. Assignment and Subletting

Neither party shall assign the contract in whole or in part without the prior written approval of the other party, but the contractor shall be entitled to subcontract the contract wholly or in part.

31. Implied Terms

No warranty, condition or representation, other than those contained in these terms and conditions shall be included in this contract by implication, statute or otherwise, but nothing contained here shall be deemed to attempt to exclude, restrict or modify any implied warranty or condition in relation to the goods and services to be supplied by the contractor, the exclusion, restriction or modification of which would pursuant to any statute, including the Competition and Consumer Act 2010, render this clause or anything contained here void or illegal.

32. Unsafe Wiring or Equipment

32.1 Pursuant to the Electricity Safety Regulations, Electrical Contractors/ Workers ("we") are not permitted to allow unsafe wiring or equipment to be connected or remain connected to an electrical installation or supply of electricity. Accordingly, if during the course of carrying out work at your property we encounter faulty or unsafe wiring or equipment, we are legally obliged to repair or isolate the same, and, report the matter to the relevant network operator.

32.2 As a result of this requirement, we may be required to perform additional work at your property beyond what was quoted for. By accepting our quote, you also authorise us to perform such additional works as we see necessary to ensure compliance with the Electricity (Licensing) Regulations, and agree to pay the cost of such works.

32.3 Alternatively, if you are not willing to pay the cost of any such works, please provide notification of this intention in writing to the Contractor before any work has commenced. In this situation, we are obliged to isolate the affected circuit and report the matter to the relevant network operator.

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