Spectrum Electrical & Data Standard Terms and Conditions

1 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 contactor is to carry out the works.

Business Day means any day except Saturday or Sunday or a day that is a public holiday or Bank Holiday in Queensland during the hours of 8.00am to 4.00pm.

Contract Documents include all drawings, plans and specifications and all other documentation provided to the contactor by the customer.

Completion Date means the date for the 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 contract or unless otherwise stated 12 weeks.

Electrical Articles has the meaning given to this term by the Electrical Regulation 1994, schedule 1

GST act means the act titled A New Tax System (Goods & 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 apart from minor defects & Omissions.

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 –

(a) That has not been selected, or the price of which is not known when the contact is entered into.

(b) For the cost of supply and delivery of which a reasonable allowance is, or is to be made in the contract by the customer.

Provisional Sum is the amount that is the contractors estimate of the cost of performing the works in relation to works for which the contractor, after which making all reasonable enquiries cannot state a definite amount when the contract is entered into.

Regulated Contract has the meaning given to this term by the domestic building contacts act 2000 (Qld)

Receipt Day for a regulated contract means –

(a) The day on which the customer receives the following documents from the contractor – 1. A signed copy of the contract and 2. a copy of the appropriate contract information statement for the contract ; or

(b) 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 Subcontractors;

Site means where the works under the contract are to be 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 works, commencement and completion dates and the insurance cover held by the contractor.

Variation means to vary the works by ;

(a) Carrying out additional works

(b) Omitting any part of the works

(c) Changing the Scope of work.

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 modifications or re enactments 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 visa versa

1.2.3 A reference to a person includes an individual and a cooperation, partnership, joint venture, association, authority, trust, State or government.

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 form a 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, notated, supplemented or replaced from time to time.

1.2.9 Where an expression is defined, another part of approach 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 of 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 an 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 those terms and conditions of quotation and any other terms and conditions which 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. VARIATIONS (CONTINUED)

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 20% plus any and all GST payable with respect to the addition: and

5.2.4.2.2. Additions 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 Act 1994 and the Electricity Regulations 1994

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 Articles supplied or installed by the Contractor. It is theCustomer'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 Articles 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 fourteen (14) 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 his 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 in 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;

9.1.2.6. Supply Authority Delays

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.

9.1.7. The Contractor accepts no responsibility for data loss arising from works associated with computer systems. Backup of Data is the Customers responsibility.

9.1.8. Unless otherwise stated all temporary services to site are the customer's responsibility. These include but not limited to, electricity, toilets, water and phones.

9.1.9. The Contractor accepts no responsibility for damages to or liability arising from damages to existing underground services during the completion of works.

9.1.10. Unless specifically stated the Contractor is not responsible for the patching, painting or making good of surfaces resulting from works undertaken.

10. RISK & OWNERSHIP

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

10.2. In connection with the materials, equipment and Electrical Articles 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 right 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 definable 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 Bailey only .

2….