

TERMS AND CONDITIONS: QUOTED WORKS

1. Application

These Terms and Conditions (**Terms**) shall apply to the provision of the services detailed overleaf or attached (as applicable) (**Services**) in the quotation (**Quotation**) by On Electrical Contractors Ltd, a company registered in England & Wales under company number 7221683 whose registered office is at 41 Bank Street, off Clark Way, Hyde, Cheshire, SK14 2AU (**Supplier**) to you (**Client**).

2. Interpretation

2.1 **Additional Services** means services that are requested or added by the Client once the Services have commenced on site (or otherwise) that are additional to the Services as set out in the Quotation and confirmed in the order acknowledgement and/or in any alteration thereto.

2.2 **Business Day** means any day other than a Saturday, Sunday or bank holiday when banks in London are open for business.

2.3 **Client Default** has the meaning set out in clause 4.2.

2.4 **Commencement Date** has the meaning set out in clause 6.2.

2.5 **Completion** occurs when in the Supplier's reasonable opinion the Services have been supplied and finished to a standard such that the Client can utilise the equipment / area that has received the Services and there are no material outstanding health and safety issues that prevent the Client from doing so.

2.6 **Contract** means the contract between the Supplier and the Client for the supply of Services in accordance with these Terms.

2.7 **Events** has the meaning set out in clause 7.3(d).

2.8 **Fees** has the meaning set out in clause 5.1.

2.9 **Force Majeure Event** has the meaning set out in clause 15.1.

2.10 **Goods** means those Goods set out in the Quotation and confirmed in the order acknowledgement and/or in any alteration thereto which are provided incidental to the Services.

2.11 **Order** means the Client's order for Services as set out in the Client's purchase order form, or the Client's written acceptance of the Quotation by the Supplier or alteration thereto, as may be the case.

2.12 **Supplier Materials** has the meaning set out in clause 4.1(g).

The headings in these Terms are for convenience only and shall not affect their interpretation.

2.12 Words imparting the singular number shall include the plural and vice-versa.

2.13 A reference to **writing** or **written** includes faxes and emails.

3. Services

3.1 With effect from the Commencement Date stated in the Quotation and in consideration of the Fees being paid in accordance with these Terms, the Supplier shall provide the Services to the Client.

3.2 The Supplier shall use reasonable care and skill in its performance of the Services.

3.3 The Supplier shall have the right to make changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Client in any such event as soon as reasonably practicable.

3.4 The Supplier shall use reasonable endeavours to complete its performance of the Services within the time agreed as set out in the Quotation; however such dates shall be estimates only and time will not be of the essence in the performance of these obligations.

4. Client Obligations

4.1 The Client shall:

- ensure that the terms of the Order are complete and accurate;
- co-operate with the Supplier in all matters relating to the Services;
- provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Client's premises, and other facilities as reasonably required by the Supplier;
- provide the Supplier with all relevant information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- prepare the Client's premises for the Supply of the Services;
- obtain and maintain all necessary permissions, consents, licences which may be required to enable the Supplier to provide the Services before the date on which the Services are to commence; and
- keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Client's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.

4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

- the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays the Supplier's performance of any of its obligations;
- the Supplier shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Client Default; and
- the Client shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Client Default.

4.3 The Client shall indemnify the Supplier against all damages, costs, claims and expenses suffered by the Supplier arising from any loss or damage to any equipment (including that belonging to third parties) caused by the Client.

5. Fees and Deposit

5.1 The fees (**Fees**) for the Services are set out in the Quotation.

5.2 In addition to the Fees, the Supplier shall be entitled to recover from the Client reasonable incidental expenses for materials used and for third party goods and /or services supplied in connection with the Services, including but not limited to travelling expenses, hotel costs, subsistence and associated expenses.

5.3 The Client shall pay the Supplier for any Additional Services provided by the Supplier that are not specified in the Quotation and confirmed in the order acknowledgement and/or in any alteration thereto in accordance with the Supplier's then current, applicable hourly rate in effect at the time of performance or such other rate as may be agreed

between the Supplier and the Client. The provisions of sub-Clause 5.2 shall also apply to such Additional Services.

5.4 The Fees are exclusive of any applicable VAT and other taxes or levies which are imposed or charged by any competent authority.

5.5 The Client may be required to pay a deposit ("Deposit") which shall be paid in cash or cleared funds, as detailed in the Quotation and confirmed in the order acknowledgement and/or in any alteration thereto;

5.6 If a Deposit is requested and the Client does not pay the Deposit to the Supplier in accordance with sub-clause 5.5 the Supplier shall have the right to withhold provision of the Services until the Deposit is paid in cash or in cleared funds or may terminate in accordance with Clause 11.

5.7 The Deposit shall be non-refundable unless the Supplier fails to provide the Services and is at fault for such failure (where the failure is not the fault of the Supplier, no refund shall be made).

6. Quotation, Contract and Variation

6.1 The Order constitutes an offer by the Client to purchase the Services in accordance with these Terms.

6.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

6.3 The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

6.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures or on the Supplier's website, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

6.5 These Terms apply to the Contract to the exclusion of any other terms that the Client may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, unless agreed otherwise in writing by the parties.

6.6 The Quotation is valid for a period of 30 days only from the date shown on the Quotation unless withdrawn in writing by the Supplier at an earlier time.

6.7 Either the Supplier or the Client may cancel the order for any reason prior to the Supplier's written acceptance (or rejection) of the Order;

6.8 The Supplier reserves the right the right to carry out credit checks of the Client and the Client is deemed to consent to such credit checks by submitting an Order. The Supplier also reserves the right to set credit limits.

6.9 If the Client wishes to vary any details of the Services it must notify the Supplier in writing as soon as possible. The Supplier shall use reasonable endeavours to make any required changes and will issue a further Quotation to the Client confirming any additional costs;

6.10 If, due to circumstances beyond its control, the Supplier has to make any change in the Services or the arrangements relating to the provision thereof, it shall notify the Client as soon as reasonably practicable. The Supplier shall use its reasonable endeavours to keep any such changes to a minimum and shall seek to offer the Client arrangements as close to the original as is reasonably practicable in the circumstances.

7. Goods

7.1 Risk in any Goods supplied by the Supplier in the delivery of its Services shall pass to the Client on delivery.

7.2 Title to the Goods shall not pass to the Client until the Supplier has received payment in full (in cash or in cleared funds) for the Goods set out in the Quotation and confirmed in the order acknowledgement and/or in any alteration thereto.

7.3 Until title to the Goods has passed to the Client, the Client shall:

- store the Goods separately from all other goods held by the Client so that they remain readily identifiable as the Supplier's property;
- not remove, deface or obscure any identifying mark on or relating to the Goods;
- maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- notify the Supplier immediately upon the occurrence of any of the following events (**Events**):-

(i) the Client suspends, or threatens to suspend, payment of its debt or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of doing so, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom the foregoing apply;

(ii) the Client commences negotiations with any creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

(iii) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Client (being a company);

(iv) the Client (being an individual) being the subject of a bankruptcy petition or order;

(v) a creditor or encumbrancer of the Client attaches or takes possession of, or a distress, execution, sequestration, or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

(vi) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Client (being a company);

(vii) a floating charge holder over the Client's assets (being a company) has become entitled to appoint or has appointed an administrative receiver;

(viii) a person becomes entitled to appoint a receiver over the Client's assets or a receiver is appointed over the Client's assets;

(ix) any event occurs, or proceeding is taken, with respect to the Client in any jurisdiction to which its subject has an effect equivalent or similar to any of the events set out in clauses 7.3(d)(i) to 7.3(d)(viii) (inclusive);

(x) the Client suspends, threatens to suspend, ceases or threatens to cease, to carry on all or substantially the whole of its business; or

(xi) the Client (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

And;

(e) give the Supplier such information relating to the Goods as the Supplier may reasonably require from time to time.

7.4 If before title to the Goods passes to the Client, the Client becomes subject to any of the Events or the Supplier reasonably believes that any Event is about to happen, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at its discretion require the Client to deliver up the Goods, or enter during normal business hours any premises of the Client or of any third party where the Goods are stored in order to recover them.

8. Payment

8.1 Following the Client's acceptance of the Quotation, the Supplier shall invoice the Client for the Fees on the invoice date(s) set out in the Quotation.

8.2 The Client shall pay the Fees due in cleared funds within 30 days of the date of the Supplier's invoice or otherwise in accordance with any credit terms agreed in writing between the Supplier and the Client.

8.3 Time for payment shall be of the essence of the Contract between the Supplier and the Client.

8.4 Without limiting any other right or remedy of the Supplier, if the Client fails to make payment in accordance with sub-Clause 8.2, the Supplier may charge the Client interest at the rate of 8% per annum above the Barclays Bank base rate from time to time on the amount outstanding from the due date for payment until payment is received in full, whether before or after judgment.

8.5 Receipts for payment will be issued by the Supplier only at the Client's request.

8.6 All payments must be made in Pounds Sterling unless otherwise agreed in writing between the Supplier and the Client.

8.7 It is acknowledged that on Completion of the Services there may be some snags (small outstanding matters over which the Supplier has little or no control). If the Client believes that any snags exist the following procedure shall be followed:

(a) the Client must prepare and submit a written snagging list to the Supplier within 14 Business Days of Completion of the main Contract;

(b) within 7 Business Days of receipt of the snagging list the Supplier shall so far as is reasonably practicable attend the premises at which the Services have been carried out in order to check and agree the snagging list with the Client. The snagging list must be signed and dated by or on behalf of both parties to confirm agreement;

(c) following agreement of the snagging list the Supplier shall use its reasonable endeavours to rectify any snags within 14 Business Days of the date of agreeing the snagging list, during which time the Client shall not engage any third party to rectify the snags. If the Client does engage a third party to rectify the snags before allowing the Supplier an opportunity to rectify the snags, the Client shall be responsible for all costs and expenses of engaging that third party and the Supplier shall have no liability for such third party costs and expenses;

(d) If the Client fails to submit a written snagging list to the Supplier within 14 Business Days of Completion of the Contract, the Supplier may in its sole discretion deem the Services to be irrevocably accepted by the Client as being complete;

(e) the Client may not retain any outstanding sum due to the Supplier under the Contract on the grounds that snagging work needs to be completed without the Supplier's prior written consent as to the proposed retention and the amount of any proposed retention.

9. Set-Off

9.1 Save where provided otherwise in these Terms, the parties shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the parties shall not be entitled to assert any credit, set-off or counterclaim against the other party in order to justify withholding payment of any such amount in whole or in part.

10 Assignment and Sub Contracting

10.1 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

10.2 The Client shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

11. Termination

11.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of its obligations under these Terms and (if such a breach is remediable) fails to remedy that breach within 14 Business Days of that party being notified in writing of the breach; or

(b) the other party is or becomes the subject of any of the Events.

11.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under the Contract on the due date for payment.

11.3 Without limiting its other rights or remedies, the Supplier shall have the right to suspend provision of the Services under the Contract or any other contract between the Client and the Supplier if the Client becomes subject to any of the Events, or the Supplier reasonably believes that the Client is about to become subject to any of the Events, or if the Client fails to pay any amount due under the Contract on the due date for payment.

12. Consequences of Termination

12.1 On termination of the Contract for any reason:

(a) the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Client immediately on receipt;

(b) the Client shall return all of the Supplier Materials and Goods which have not been fully paid for. If the Client fails to do so, then the Supplier may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose;

(c) If the Client terminates the Contract after the Supplier has ordered the Goods required for the Services, the Supplier reserves the right to charge the Client a handling fee of up to 30% of the total list price of the Goods.

(d) the accrued rights, remedies, obligations and liabilities of the parties as at the expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed before the date of termination or expiry; and

(e) clauses which expressly or by implication have effect after termination shall continue in

full force and effect.

13. Intellectual Property

The Supplier reserves all copyright and any other intellectual property rights (if any) which may subsist in the products of, or in connection with, the provision of the Services. The Supplier reserves the right to take such action as may be appropriate to restrain or prevent the infringement of such intellectual property rights.

14. Limitation of Liability

14.1 Nothing in these Terms shall limit or exclude the Supplier's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

(b) fraud or fraudulent misrepresentation; or

(c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

14.2 Subject to sub-clause 13.1 above:

(a) The Supplier shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

(b) the Supplier's total liability to the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount due under the Contract or the sum of £250,000 (TWO HUNDRED AND FIFTY THOUSAND POUNDS), whichever is the lower.

14.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

14.4 This clause 14 shall survive termination of the Contract.

15. Force Majeure

15.1 The Supplier shall not be liable for any failure or delay in performing its obligations where such failure or delay results from any event that is beyond the reasonable control of the Supplier. Such events include, but are not limited to: power failure, internet service provider failure, industrial action (whether involving the workforce of the Supplier or any other party), malicious damage, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, default of suppliers or subcontractors, or any other event that is beyond the control of the Supplier (**Force Majeure Event**).

15.2 If the Force Majeure Event prevents the Supplier from providing any of the Services for more than 4 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Client.

16. Communications

16.1 All notices and other communications to be given under these Terms shall be in writing and signed by, or on behalf of, the party giving notice (or a duly authorised officer of that party).

16.2 Notices shall be deemed to have been duly given:

(a) when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient;

(b) when sent, if transmitted by fax or email and a successful transmission report or return receipt is generated;

(c) on the fifth Business Day following mailing, if mailed by national ordinary mail; or

(d) on the tenth Business Day following mailing, if mailed by airmail.

(e) this sub-clause 16.2 shall not apply to the service of proceedings or other documents in any legal action.

16.3 All notices under these Terms shall be addressed to the most recent address, email address or fax number notified to the other party.

17. No Waiver

17.1 A waiver of any right under the Contract is only effective if it is in writing and no waiver by the Supplier of any breach of these Terms by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision.

17.2 No failure or delay on the part of either the Supplier or the Client to exercise any right, power or privilege under these Terms shall operate as a waiver of, nor shall any single or partial exercise of any such right, power or privilege preclude, any other or further exercise of any other right, power or privilege.

18. Variation

18.1 Except as set out in these Terms, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Supplier.

19. Severance

19.1 If a court or any other competent authority finds that any provision of the Contract or these Terms (or part of any provision) is invalid, illegal or unenforceable, that provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract or these Terms shall not be affected.

19.2 If any invalid, unenforceable or illegal provision of the Contract or these Terms would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

20. No Partnership or Agency

20.1 Nothing in the Contract or these Terms is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties, nor constitute any party the agent of the other party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

21. Third Parties

21.1 A person who is not a party to the Contract shall not have any rights under or in connection with it.

22. Law and Jurisdiction

22.1 These Terms and the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

(On Electrical Contractors Ltd, Terms & Conditions, last updated April 2013)

