



Office: 9 Boys Road  
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ABN – 412 681 176 61 ECL – 69 154 AU – 1903 QBCC – 116 8213

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## TERMS & CONDITIONS

### 1.0 DEFINITIONS

#### 1.1 "SHINE FAMILY TRUST TRADING AS CITY POWER & AIR"

Shall mean "City Power & air" it's successors and assigns or any person acting on behalf of and with the authority of City Power & Air

#### 1.2 "CLIENT"

Shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotations, work authorisation other form as provided by City Power & air to the Client

#### 1.3 "GUARANTOR"

Means the person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.

#### 1.4 "GOODS"

Shall mean Goods supplies by City Power & air Electrical Contractors to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by City Power & air Electrical Contractors to the client.

#### 1.5 "SERVICES"

Shall mean all Services supplied by City Power & Air Electrical Contractors to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).

#### 1.6 "PRICE"

Shall mean the price payable for the Goods or Services as agreed between City Power & air Electrical Contractors and the Client in accordance with clause 2.2 and 2.3 of this contract. All pricing is to an amount of Australian Currency.

### 2.0 ACCEPTANCE OF CONDITIONS

We advise that prior to acceptance of an order for works, the conditions of this contract will be mutually agreed with our company.

By placing an order, the customer hereby accepts the following conditions, which may be varied only in writing by City Power & Air. Please be advised that placing this order with City Power & Air will over ride any terms and conditions provided by the Customer.

#### 2.1 TAXATION

In the event that at any time during the term of the contract any new or additional taxation is imposed which effects the cost of materials, services or labour associated with the works. or which may apply to the total invoiced costs, such increases shall be added to the contract sum.

#### 2.2 TERMS OF PAYMENT

Our standard Terms of Payment are as follows:

For installation works long term projects 1 month or more in duration progress claims are required:

Monthly progress claims will be made and these will include:

- All unfixed materials at site.
- Electrical switchboards designed specifically for this project.
- Mains and sub mains cables.
- All materials and other equipment stored off site because of delays in construction or unavailability of site access.
- All approved variation works in progress. 80% of all unapproved variations of works in progress. In additions, initial progress claims may/will also include up to 10% of the contract value for mobilisation, project setting up, commitment to initial procurement of materials and subcontracts the other costs and obligations incurred at the commencement of the project.
- The Customer shall pay to City Power & Air the Deposit Stated in the Schedule upon the signing or acceptance of Quotation.
- City Power & Air shall submit to the Customer progress claims for each stage which shall consist of:
- The percentage of the Contract Sum applicable to that stage as stated in the Schedule: and
- Any other amounts then payable to City Power & Air in respect of variations issued pursuant to clause 3.3
- The Customer shall pay to City Power & Air progress payments in accordance with the progress claims supplied by City Power & Air to be paid within seven (7) calendar days of submissions of the progress claim by City Power & Air.
- Should the Customer neglect or refuse to pay the amount of any Progress Payment by the due date then City Power & Air may, at our option with or without notice to the Customer, suspend work until full payment is made.
- For General Works:  
Monthly progress claims based on the following milestones:  
20% on placement of order or otherwise stated on contract  
40% on completion of rough-in



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35% on completion of works and before certification is issue or commissioning.  
5% issue of certification or commissioning

### **2.3 VARIATIONS**

- (a) Any variation to this Agreement shall be notified in writing by the person seeking the variation setting forth the details of such changes and the value thereof shall be added to or deducted from the contract sum as the case may be.
- (b) Where no Agreement is reached by the Customer and City Power & Air as to the value of variations, the following shall apply:
- Additions shall be charged:  
labour at cost plus overheads plus 10%:and  
materials at trade price plus 20%
  - Deletions shall be made at cost.
- (c) Where there is an agreed variation to the scope of works, a variation document will be generated by City Power & Air which will describe the variation, estimate any delay, state the change in contract price or how the change in prices is to be calculated and make appropriate provisions for payment.

### **2.4 TERMS OF PAYMENT**

Short Term Projects. Notwithstanding that the company, City Power & Air may from time to time offer extended terms of payment, it reserves the right to require full payment of all indebtedness within 7 days of the date of invoice relating to the delivery of goods for provision of services.

### **2.5 INTEREST AND ADMINISTRATION FEE WHEN ACCOUNTS ARE OVERDUE:**

We reserve the right to charge administration fee \$20.00 (Twenty Dollars) and interest monthly at the rate of 2% per month on the monthly balance from end of month's goods and services supplied if account becomes overdue. Part payments shall be firstly applied against interest.

### **2.6 RECOVERY COST PAYABLE BY THE CUSTOMER:**

We reserve the right to charge all costs incurred or which may be incurred in recovering or attempting to recover any goods and services or amount owed by the customer, including any debt collectors commission and any solicitors costs and charges incurred in recovering or attempting to recover an amount owed by the customer. Any part payment shall firstly be credited against interest then debt recovery charges.

### **2.7 RETURN OF GOODS**

Credits will only be allowed if authorised by City Power & Air, and at value calculated by City Power & Air. Claims for credits must be made in writing within seven days of delivery and invoice number and date be quoted. Goods being returned are at the risk and cost of the customer at all times. Re stocking fees may apply.

## **THE CONTRACT**

### **3.0 PRICE BASIS**

The price is quoted on the condition that supplier items and major material items can be ordered, and stored either on the site or off site with storage certificates issued and payment made for materials held in storage.

### **3.1 COPPER VARIATION**

Due to the volatile price of copper and the international market, our price associated with Copper based products, but not limited to cable has been calculated to include copper costs based on the AEEMA Copper Cathode Index. Should our tender offer prove of interest, any offer by us will be reviewed and fixed at the time of entering into any agreements.

### **3.2 SITE PRODUCTIVITY ALLOWANCE**

No allowances are made by City Power & Air. In our quotations unless stipulated by City Power & Air in writing, for the payment of any special or Site Allowances. If these are applicable on any sites that we are engaged on, we would require reimbursement of direct costs plus statutory, overhead and administration costs of twenty five (25) percent.

### **3.3 SITE AMENITIES AND ABLUTIONS**

We have assumed that all site amenities and ablutions will be provided by others free of charge to our company.

### **3.4 SPECIAL PAYMENTS**

Unless specifically stated in City Power & Air quotations, no provision has been made the payment of any special site agreement, award or disability allowances.

### **3.5 SITE INDUCTIONS**

Unless specifically stated in City Power & Air quotations, no allowance had been made for any site inductions.

### **3.6 CURRENCY EXCHANGE RATES**

Where imported equipment is involved, the above price is based on the exchange rate at the time of tendering. Should the actual exchange rate vary from the Base Exchange rate, then the component of imported goods included in the tender price quoted would be adjusted accordingly.

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### **3.7 DAMAGES**

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

### **3.8 CONFIDENTIALITY OF DOCUMENTS & PROPRIETARY INFORMATION**

Drawings, specifications and other information supplied by us as part of our tender shall be regarded as confidential, shall be used only for Technical information, consisting of drawings, specifications, calculations and design shall remain our property and must not be copied or disclosed to any third party unless authorised by us.

### **3.9 RISK & OWNERSHIP**

- (a) Risk of loss, damage or destruction to the materials, equipment and Electrical Equipment or any part thereof shall pass to the Customer on installation.
- (b) In connection with the materials, equipment and Electrical Equipment while they remain the property of City Power & Air, the Customer agrees with City Power & Air that:
1. the Customer has no right or claim to any interest in the materials to secure any liquidated or unliquidated debt or obligation City Power & Air owes to the Customer,
  2. the Customer cannot claim any lien over the materials,
  3. the Customer will not create any absolute or defeasible interest in the materials in relation to any third party except as may be authorised by City Power & Air,
  4. where the Customer is in actual or constructive possession of the materials,
    1. the Customer will not deliver them or any document of title to the materials to any person except as directed by City Power & Air. and
    2. it is in possession of the materials as a bailee of those materials and owes City Power & Air the duties and liabilities of a bailee.
- (c) In connection with the materials, City Power & Air states to the customer that:
1. City Power & Air has the right to supply the materials to the Customer,
  2. the activities of City Power & Air in supplying the materials do not infringe the rights of the owner of the materials (where City Power & Air is not the owner of the materials);
  3. if the materials are not owned by City Power & Air, that City Power & Air is authorised to supply the materials to the Customer.
- (d) City Power & Air and the Customer agree that:
1. the property of City Power & Air in the materials remains with City Power & Air until City Power & Air has received payment in full of the Price and any other monies due to City Power & Air under this agreement or any Contract between the parties;
  2. the Customer is a bailee of the materials until such time as property in them passes to the Customer and that this bailment continues in relation to all of the materials until the Price of the Contract has been paid in full;
  3. pending payment in full of the Price under the Contract, the Customer;
  4. must not supply any of the materials to any person;
  5. must not allow any person to have or acquire any security interest in the materials;
  6. must insure the materials for their full insurable or replacement value (whichever is the higher) with any insurer licenced or authorised to conduct the business of insurance in the place where the Customer carries on business;
  7. must not remove, deface or obliterate any identifying plate, mark or number on any of the materials.
- (e) Despite clause 3.9 (c), if the Customer supplies any of the materials to any person before all moneys payable by the Customer have been paid to City Power & Air (and have not been claimed or clawed-back by any person standing in the place of or representing the Customer), the Customer agrees that:
1. it holds the proceeds of re-supply of the materials on trust for and as agent for City Power & Air immediately when they are receivable or received;
  2. it must either pay the amount of the proceeds of re-supply to the seller immediately when they are received or pay those proceeds into an account with a bank or financial institution or deposit-taking institution as trustee for City Power & Air;
  3. any accessory or item which accedes to any of the materials by an act of the Customer or of any person at the direction or request of the Customer becomes and remains the property of City Power & Air until City Power & Air is paid in accordance with clause 3.9(c)1 when the property in the materials (including the accessory) passes to the Customer;
  4. if the Customer fails to pay the Price within the period as stated in the Contract, City Power & Air may recover possession of the materials at any site owned, possessed or controlled by the Customer and the Customer agrees that City Power & Air has an irrevocable licence to do so and to dispose of the equipment to recover costs if the Customer breaches this agreement or any Contract between the parties.

### **3.10 HAZARDOUS MATERIALS**

Unless specifically stated in this quotation, the quoted price is based on the assumption that the work for which this quotation is submitted will be executed in a hazardous material free environment. It is a strict condition of this quotation that the customer accepts full responsibility for the resolution of any problems and for delays and additional costs which may result from the presence of these materials in or about the site on which the works (or any part thereof) are to be performed.



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### **3.11 WORK SITE ACCESS**

We have based our offer on free and unrestricted access to all required work areas.

### **3.12 LIVE WORK CLAUSE**

It is our strict policy to only undertake live work or work near live conductors where it is safe to do so, particular emphasis is placed on:

Compliance with AS/NZA 4836:2011 "Safe working on Low Voltage Electrical Installations, relevant Commonwealth and State Statutory Acts and Work Place Regulations".

Our live work procedure is designed to eliminate risk of injury to our employees, damage to your installations and unexpected power disconnections.

The above may require us to disconnect or isolate parts of the installation to undertake such work for which additional charges may be applicable.

### **3.13 CANCELLATION FEES**

If work is not able to be proceeded with as arranged and if no alternative activities can be undertaken at site, a cancellation fee of 20% of the contract will be charged if the work is confirmed with and agreed start date set and is then cancelled or re-scheduled, based on man hours and materials committed to the work at the time of cancellation where these are not able to be otherwise deployed.

### **3.14 SERVICE/DELIVERY BY INSTALMENTS**

Where it is practical, we reserve the right to deliver the goods, service and/or carry out the installation by instalments. In such instances progress payments and billings for each instalment shall be due in accordance with the clauses "Terms of Payment" above.

### **3.15 EXPECTED RISKS**

City Power & Air 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 City Power & Air, including but not limited to:

- (a) any act, default or omission on the part of the Customer, its employees and or agents, or
- (b) any events occurring on or before Completion Date including but not limited to:-
  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.,
  2. electric power supply failure,
  3. inclement weather,
  4. unavailability of suitable materials or parts,
  5. failure of transportation affecting City Power & Air, its suppliers or any other person company or firm,
  6. Latent conditions
  7. Variations directed by the customer
  8. Changes in the law, or
  9. Directions or delays by municipal, public or statutory authorities.

### **3.16 SITE CONDITIONS**

This quotation is valid only if the site equipment/plant is in the same condition as stated when this quotation was prepared. Any additional costs incurred due to changes or further damaging of equipment by others will be deemed to be a variation to the contract.

### **3.17 DELIVERY**

Delivery periods quoted are subject to change and as such should be treated as estimates only. We will endeavour to meet delivery dates but do not accept any liability for failure to complete the contract within any specified delivery period unless specifically stated otherwise in our quotation.

### **3.18 PERFORMANCE AND PERFORMANCE DATA**

Performance data provided by us is based on our experience and from up to date regularly calibrated test equipment. Please be aware we can accept no liability if performance parameters are changed by the customer at the site after final testing and verification.

### **3.19 NORMAL WORKING HOURS**

Pricing: All written and verbally communicated prices are based on a standard 8 hour day, working hours 7.00am to 3.30 pm Monday to Friday. All work performed outside normal standard working hours may incur additional costs at penalty or overtime rates at City Power & Air's sole discretion.

### **3.20 AUSTRALIAN STANDARD AS2987**

For any matters not specifically addressed in your enquiry or this quotation, our offer is based on AS2987 "General conditions of contract for the supply of equipment with or without installation".

### **3.21 CONTRACTORS WARRANTY**

City Power & Air warrants that:

- (a) all materials to be supplied for use in the Works:-
  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 of which they are used and;
  2. unless otherwise stated, are new;

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- (b) the Works will be carried out:-
1. in accordance with all relevant laws and legal requirements, including the Electricity Safety Act 2002, Electrical Safety Regulation 2002, and Electrical Safety Codes of Practice.
  2. in an appropriate and skilful way, and
  3. with reasonable care and skill,
- (c) 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
- (d) at all times during the currency of the Contract it will hold all licences required to carry out and complete the Works.
- (e) City Power & Air does not warrant the quality or performance of any appliances supplied or installed by City Power & Air. It is the Customer's responsibility to ensure that Warranty cards or other registration requirements of the Manufacturer of any appliances supplied or installed by City Power & Air are complied with.

### **3.22 INFORMATION AND DRAWINGS**

All descriptive specifications, illustrations, drawings, dimensions etc, furnished by us are approximate only and are intended to be by way of general description of the goods or service and do not necessary form part of the contract unless specifically identified as such by us in writing.

### **3.23 INSURANCE**

- (a) City Power & Air shall effect and shall maintain during this Agreement, Public Liability Insurance to a value of not less than \$5,000,000 and Workcover Insurance in accordance with the requirements of the applicable legislation for all employees.
- (b) City Power & Air shall provide if requested by the Customer evidence of the existence of such policies.

### **3.24 NON-SOLICITATION**

The customer/client agrees not to solicit or entice away from City Power & Air (or attempt to do so) any employee, consultant or customer of City Power & Air or engage any of City Power & Air employees in any other capacity without prior notice and permission of City Power & Air.

### **3.25 ELECTRICAL SAFETY**

Please note that if during the course of installation when works are been conducted within and around switchboards that if the same is found defective or deemed to be unsafe by the Licensed A. Grade electrician you will immediately be notified and made safe in accordance to state regulations. All costs associated with the rectification works including materials and labour shall be to the customer's account. All works shall be notified to the chief electrical inspector as required.

### **3.26 BREAK-UP OF PRICES**

The break-up of prices quoted are submitted for the purpose of a guide only. Should any of the quoted figures be deleted from the contract, we reserve the right to revise the amount tendered.

## **4.0 PPS ACT**

- (a) In this clause PPSA means the Personal Properties Securities Act 2012
- (b) If the Supplier determines that this agreement (or a transaction in connection with it) is or contains a security interest for the purposes of the PPSA, the Customer agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Supplier asks and considers necessary for the purposes of:
1. Ensuring that the security interest is enforceable, perfected and otherwise effective: and/or
  2. Enabling the Supplier to apply for any registration, complete any financial statement or give any notification, in connection with the security interest: and/or
  3. Enabling the Supplier to exercise the rights in connection with the security interest.
- (c) The Supplier may, in its absolute discretion, register any security interest as defined in the PPSA in the register operation in accordance with the PPSA.
- (d) The Supplier need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given.

## **5.0 DISPUTE RESOLUTION**

- (a) Any dispute between the Customer and City Power & Air arising under, or in connection, with this agreement or any contract between the parties, shall:
- (b) In the first instance be referred by one party to the other and the party shall use all reasonable endeavours to resolve the difference or dispute without resort to future process; and
1. If the difference or dispute cannot be resolved in such a manner within seven (7) days of the difference or dispute arising then it shall be referred to an Expert appointed by agreement between the parties or failing agreement by either:-
  2. The Commercial and Consumer Tribunal; or
  3. The Electrical and Communications Association which City Power & Air is a member. As to that determination:
  4. The Expert acts as an expert and not as an arbitrator;
  5. The Expert must take written submissions from each party if those submissions are received within the time limit by the Expert;
  6. The Expert's decision is final and binding;
  7. The Expert is obliged to give reasons;
  8. Each party must direct the Expert to provide a decision within seven (7) Business Days of its appointment; and



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9. The Expert's costs shall be paid by the party determined by the Expert to be the party responsible for the payment of the Expert's costs.