

1. APPLICATION OF TERMS

These terms and conditions ('Terms') apply to all Services provided by Molloy Electrical Contracting Pty Ltd (ACN 159 195 598) trading as MEC NT ('we', 'us', 'our', 'MEC NT') to you ('you', 'your'). By engaging us to provide Services, you acknowledge and agree to be bound by these Terms. We agree to provide the Services to you in accordance with these Terms.

2. TENDER WORK

Where we provide Services pursuant to, or in connection with, a formal tender process, head contract, subcontract agreement, or any agreement where we are engaged as a subcontractor or where the scope of works is governed by a principal contract, the terms of the relevant head contract, tender, or principal agreement will take precedence over these Terms. These Terms will apply only to the extent they are not inconsistent with those terms.

3. VALIDITY

- 3.1 All quotes provided by us are valid for acceptance for 30 days from the date of issue, unless otherwise agreed in writing.
- 3.2 We are not obliged to provide the services set out in the quote unless and until you have provided notice in writing of the acceptance of the quote ('Accepted Quote').
- 3.3 We reserve the right to withdraw or amend any quote at any time before we receive your written acceptance.

4. SCOPE OF SERVICES

- 4.1 In these Terms:
 - a. 'Works' means the labour, services, installation, or other work to be performed by us as described in the Accepted Quote;
 - b. 'Goods' means the goods, materials, or products supplied by us as described in the Accepted Quote; and
 - c. 'Services' means the Works, the Goods, or both, as the context requires.
- 4.2 We agree to provide the Services set out in the Accepted Quote, unless otherwise agreed in writing between us.
- 4.3 Unless expressly included in the Accepted Quote, the Services do not include:
 - a. Obtaining permits, approvals, or consents from any authority (unless we have agreed to do so);
 - b. Working outside normal business hours;
 - c. Making good, painting, patching, or restoration work following completion of the Services; or
 - d. Any other work not specifically described in the Accepted Quote.

- 4.4 You must:

- a. Provide us with free and uninterrupted access to the site at all times necessary for us to perform the Services;
- b. Obtain all necessary permits, approvals, and consents required for the Services to be completed (unless we have agreed to obtain them);
- c. Provide accurate and complete information relevant to the Services;
- d. Provide timely decisions and approvals when requested by us;
- e. Notify us in writing of any hazards, risks, or safety requirements specific to your site before we commence Works; and
- f. Ensure that any persons under your control do not interfere with or create risks for our personnel.

- 4.5 We will carry out the Works in a proper and workmanlike manner and in accordance with applicable Australian Standards and statutory requirements.

- 4.6 We will supply the Goods in accordance with applicable Australian Standards and statutory requirements.

- 4.7 Any timeframes or completion dates provided by us are estimates only and are not binding unless expressly stated otherwise in the Accepted Quote.

5. SUBCONTRACTORS

- 5.1 We may engage subcontractors to perform any part of the Services.
- 5.2 Nothing in this clause operates to assign our obligations under these Terms.

6. VARIATIONS

- 6.1 The Services may be varied by agreement:
 - a. You may request a variation of the Services ('Variation') in writing.
 - b. Upon receiving a variation request, we will provide you with an estimate of additional costs and any extension of time required to complete the Variation. We will only commence work on the Variation once we have received your acceptance in writing of the estimate of additional costs and extension of time.
 - c. If you delay or fail to provide written acceptance to a Variation within a reasonable time, we may suspend performance of all Services (including the original Services) until you provide your written acceptance or we reach agreement on how to proceed. Any suspension under this clause may result in an extension of time for completion and additional costs.

- 6.2 We may claim an extension of time and/or additional costs if the Services are delayed by factors outside our reasonable control, including but not limited to:
- a. Your failure to comply with your obligations under these Terms, including ensuring free and uninterrupted access to the site;
 - b. Force Majeure Event.

7. COMPLETION

- 7.1 When we consider the Services have reached completion, we will give you written notice.
- 7.2 Within 5 business days of receiving our notice, you may provide us written notice specifying in reasonable detail the Services that remain to be completed or any defects that must be rectified before completion can be achieved.
- 7.3 We will as soon as practicable do all those things necessary to complete the Services or rectify the identified issues.
- 7.4 If you fail to respond within 5 business days of our notice, completion will be deemed to have been achieved on the date of our notice.

8. PAYMENT

- 8.1 We may require you to pay a deposit before commencing the Services. The amount of any deposit will be specified in the Accepted Quote. We will not commence the Services until the deposit has been received.
- 8.2 We will issue invoices for payment based on:
- a. Completion of a stage of the Services identified in the Accepted Quote, or if not specified, such stages as we reasonably determine and notify to you in writing; or
 - b. Monthly, based on the value of Works completed and Goods supplied during that month; or
 - c. Upon completion of all Services; or
 - d. Any combination of the above as specified in the Accepted Quote.
- 8.3 Payment is due within 30 days from the date of invoice, unless otherwise agreed in writing.
- 8.4 You must not set off any amount you claim we owe you against any amount payable under these Terms without our prior written consent.
- 8.5 All amounts payable under these Terms are exclusive of GST. Where GST is payable on any supply made under these Terms, you must pay the GST amount in addition to the amounts otherwise payable.

9. LIMITATION OF LIABILITIES

- 9.1 You must notify us in writing of any defects in the works within 12 months of completion of the Services. We will rectify any defects notified within this period that arise from faulty workmanship or

materials at no additional cost to you subject to sub-clause 9.2.

- 9.2 Our aggregate liability to you in respect of any claim for loss or damage arising from the Services is limited, at our election, to one or a combination of the following remedies:

- a. Re-performance of or repair of defective Services; and
- b. Replacement of defective Goods.

- 9.3 We are not liable to you for any consequential, indirect, or economic loss or damage, including but not limited to loss of profits, loss of business, loss of revenue, or loss of opportunity.

- 9.4 You indemnify us and agree to hold us harmless from and against all losses, damages, costs, and expenses (including legal fees) that we suffer or incur which arise from or in connection with:

- a. Any breach of these Terms by you; or
- b. Any negligent or unlawful act or omission by you.

10. INSURANCE

- 10.1 We will maintain appropriate insurance during the performance of the Services, including public liability insurance and workers' compensation insurance.
- 10.2 Upon your written request, we will provide certificates of currency or other evidence of our insurance within 5 business days.
- 10.3 Following completion of the Services or termination of these Terms, you are responsible for insuring any completed Services. This obligation survives termination of these Terms.

11. SECURITY

- 11.1 You grant us a security interest in all Goods supplied by us to you under these Terms (including Goods that have been affixed to real property) to secure payment of all amounts owing to us.
- 11.2 You authorise us to register our security interest on the Personal Property Securities Register (PPSR) and agree to do all things necessary (including signing any documents) to enable us to register, maintain, and enforce our security interest.
- 11.3 To the extent permitted by law, you waive your right to receive a notice under sections 95, 118, 121(4), 130 and 157 of the *Personal Property Securities Act 2009* (Cth).
- 11.4 Once you have paid all amounts owing to us in full, we will release our security interest and, upon your written request, take reasonable steps to remove our registration from the PPSR.

12. TERMINATION

- 12.1 You may terminate these Terms by notice in writing.

12.2 We may terminate these Terms if you default on these Terms ('Event of Default') subject to the following:

- a. If the Event of Default is reasonably capable of remedy, we may give you written notice requiring you to remedy the breach within 7 days. If you fail to remedy the breach within that period, we may terminate these Terms immediately by further written notice.
- b. If the Event of Default is not reasonably capable of remedy, we may terminate these Terms immediately by written notice to you.

12.3 Upon termination of these Terms for any reason:

- a. All outstanding amounts owed to us become immediately due and payable;
- b. You remain liable to pay all amounts accrued up to and including the date of termination, whether or not invoiced prior to termination, including costs we have incurred for Goods purchased for the Service; and
- c. We will send you a final invoice for any unbilled amounts accrued up to and including the date of termination.

12.4 Termination of these Terms does not affect any rights or remedies that either party has accrued prior to termination or any rights or remedies that survive termination.

12.5 The clauses relating to 'Payment', 'Limitation of Liabilities', 'Confidential Information', 'Default', 'Disputes' and any other provisions that by their nature are intended to survive termination, survive termination of these Terms.

13. DEFAULT

13.1 There is an Event of Default if:

- a. You fail to pay any amount by the due date;
- b. You fail to provide free and uninterrupted access to the site necessary for us to perform the Services;
- c. You fail to ensure that any person under your control do not interfere with or create risks for our personnel;
- d. You otherwise breach any other obligation under these Terms
- e. You become insolvent or bankrupt, or enter into any arrangement with creditors, or have a receiver, administrator, or liquidator appointed.

13.2 In the event of an Event of Default, we may, without limiting any other rights or remedies available to us:

- a. Suspend performance of the Services until the default is remedied;
- b. Register a security interest over any Goods supplied to you under the PPSR;

- c. Share your payment data with, and lodge a payment default against you with, CreditorWatch or similar credit reporting agencies;
- d. Engage debt collection agents to recover outstanding amounts; and
- e. Take any other lawful action to recover outstanding amounts or enforce our rights under these Terms.

13.3 You must pay costs we incur in enforcing our rights or recovering any amounts due under these Terms, including debt collection costs and legal costs.

14. CONFIDENTIAL INFORMATION

14.1 We may:

- a. Collect, use, and store personal information and commercial information, including plans, specifications, and site data for the sole purpose of performing the Services; and
- b. Retain project files, including plans, specifications, and site data, for a minimum period of seven years from completion of the Services, unless you instruct us otherwise in writing.

14.2 Upon your request, we may provide you with information regarding our personnel including occupation licenses, qualifications and credentials.

14.3 Subject to the succeeding sub-clauses, each party must keep confidential all confidential information of the other party and must not disclose it to any third party without the other prior written consent of the other party, except as required by law or to professional advisors bound by confidentiality obligations.

14.4 If you require us to provide you with information regarding our personnel, you indemnify us and hold us harmless from and against all losses, damages, costs, claims, and expenses arising from or in connection with contravention of the preceding sub-clause.

14.5 A party may disclose confidential information:

- a. To its employees, contractors, subcontractors, and professional advisors who have a genuine need to know the information for the proper performance of the Works, provided they inform them of the confidential nature of the information before disclosure and ensures they comply with confidentiality obligations equivalent to those in this clause;
- b. To debt collection agencies, credit reporting agencies (including CreditorWatch), lawyers, and other third parties for the purposes of recovering debts, enforcing rights, or taking action under these Terms
- c. As required by law or court order.

15. DISPUTES

15.1 If either party wishes to dispute any matter in connection with these Terms or the Services, that party must give the other party written notice specifying the dispute ('Dispute Notice').

15.2 You must notify us of any dispute relating to:

- a. Defects in the Services within 12 months of completion of the Services;
- b. Any invoice within 30 days of receipt of that invoice;
- c. Any other matter within 90 days of the facts giving rise to the dispute becoming known to you or within 90 days of when you ought reasonably to have become aware of those facts.

15.3 Upon receipt of a Dispute Notice, the parties must meet and negotiate in good faith to attempt to resolve the dispute within 14 days of the date of the Dispute Notice, or within such other period as the parties agree in writing.

15.4 If the dispute is not resolved under the preceding clause, either party may refer the dispute to mediation or arbitration. The parties must agree on the appointment of a mediator or arbitrator, and if they cannot agree within 7 days, either party may request the Commissioner of Consumer Affairs or similar body to appoint a mediator or arbitrator.

15.5 The costs of any mediation or arbitration under this clause must be shared equally between the parties, unless the mediator or arbitrator determines otherwise.

15.6 We may suspend performance of the Services during a dispute if:

- a. The dispute relates to non-payment of an undisputed invoice and payment remains outstanding 7 days after the due date; or
- b. The dispute relates to a matter that directly prevents us from performing the Services (for example, you deny us access to the site or fail to provide necessary information or approvals that are essential to continue work).

15.7 If we suspend the Services, we must resume the Services within 2 business days of the grounds for suspension being remedied.

15.8 Despite any dispute, you must continue to pay all undisputed amounts when due. If only part of an invoice is disputed, you must pay the undisputed portion by the due date.

16. FORCE MAJEURE

16.1 A Force Majeure Event means any act, event or cause (other than lack of funds) which is beyond the reasonable control of the affected party, including:

- a. An act of God, war, sabotage, terrorism, riot, civil disorder, revolution, national or state emergency, martial law, fire, lightning, flood,

cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, power shortage, strike or other labour difficulty (whether or not involving employees of the affected party), epidemic or quarantine; and

- b. An action or inaction of any Governmental Agency (including any Court of competent jurisdiction), such as expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, decree or other legally enforceable order.

16.2 If a Force Majeure Event occurs:

- a. The affected party is excused from performing its obligations under these Terms (other than payment obligations) to the extent and for the period that performance is prevented or delayed by the Force Majeure Event;
- b. The affected party is not liable for any loss, damage, cost, or expense arising from any failure or delay in performance caused by the Force Majeure Event;
- c. Any timeframes or completion dates will be extended by a period equal to the duration of the Force Majeure Event, plus any additional time reasonably required to resume performance;
- d. The affected party must use reasonable endeavors to mitigate the effects of the Force Majeure Event; and
- e. The affected party must resume performance of its obligations as soon as reasonably practicable after the Force Majeure Event ceases.

16.3 If a Force Majeure Event continues for more than 90 consecutive days:

- a. Either party may terminate these Terms by giving the other party not less than 14 days' written notice; and
- b. If these Terms are terminated under this clause:
 - i. You must pay us for all completed Services up to the date of termination;
 - ii. Neither party is liable to the other for any loss or damage arising from the termination; and
 - iii. We will return any deposit to the extent they exceed the value of completed Services.

17. GENERAL

17.1 If a provision or the application of a provision of this agreement is invalid, prohibited, void, illegal or unenforceable in a jurisdiction:

- a. It is to be read down or severed or be ineffective in that jurisdiction to the extent of the

prohibition, invalidity voidness, illegality or unenforceability; and

- b. This will not affect the validity or enforceability of that provision in another jurisdiction, or the remaining provisions.

17.2 You must not assign or otherwise transfer your obligations under these Terms without our prior written consent.

17.3 These Terms are governed by the laws of the Northern Territory.