

Jatim Pty Ltd T/A Barnes Electrical Service (ABN 90 082 871 707)
Terms & Conditions

1. ACCEPTANCE OF THESE TERMS

- 1.1** The Customer must accept or reject a Quotation within thirty (30) days of its receipt, after which the Quotation will expire. The Contractor may, at its option, extend this period by notification in writing to the Customer.
- 1.2** The Customer may accept a Quotation in writing, verbally or through their conduct.
- 1.3** Without limiting the foregoing, any act by the Customer or those legally acting on behalf of the Customer which requests the Contractor to begin performing any services or providing any materials will be deemed as acceptance of a Quotation.
- 1.4** The Customer acknowledges that an acceptance of a Quotation is automatically an acceptance of these Terms & Conditions and that these Terms & Conditions will apply to each and every Quotation accepted by the Customer into the future unless the Contractor notifies the Customer of a change in their standard terms & conditions.
- 1.5** Once these Terms & Conditions are accepted they are irrevocable and cannot be amended without the written consent of the Contractor.
- 1.6** In the event there is more than one party as a Customer to these Terms & Conditions, all Customers will be jointly and severally liable for these Terms & Conditions.
- 1.7** The Contractor may, at its absolute discretion, and without incurring any liability to the Customer whatsoever, revise or withdraw the Quotation at any time before acceptance by the Customer of the Quotation.
- 1.8** Should the Customer cancel the engagement of the Contractor after it has been accepted, the Customer agrees they must pay the Contractor for the amount of the Quotation that is proportionate to the amount of work completed by the Contractor prior to the cancellation. The Customer will also be liable for any costs incurred by the Contractor in relation to the provision of the services and/or provision of products up to the point of cancellation including but not limited to restocking fees, non-recoverable freight charges, cost of permits and approvals, design and drafting expenses and labour.

2. DUTIES OF THE CONTRACTOR

- 2.1** The Contractor must carry out and complete the Works in compliance with the terms and provisions of the Contract Documents by the Completion Date.
- 2.2** 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.

3. CONTRACTOR'S WARRANTIES

- 3.1** The Contractor warrants that:
 - 3.1.1** all materials to be supplied for use in the Works:
 - 3.1.1.1** 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;
 - 3.1.1.2** unless otherwise stated, are new;
 - 3.1.2** the Works will be carried out:
 - 3.1.2.1** in accordance with all relevant laws and legal requirements; and
 - 3.1.2.2** in an appropriate and skilful way;
 - 3.1.3** 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
 - 3.1.4** at all times during the currency of the Contract it will hold all licenses required to carry out and complete the Works.

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4. VARIATIONS

- 4.1 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.
- 4.2 A variation document will be prepared by the Contractor which must:
 - 4.2.1 Be in writing and signed by both the Customer and the Contractor;
 - 4.2.2 State the scope of the Works which is the subject of the variation;
 - 4.2.3 Where the variation is sought by the Contractor, state the reason for the Variation; and
 - 4.2.4 State the revised completion date (if applicable and practicable).
- 4.3 No Variation will be performed until written authorisation has been received from the Customer.
- 4.4 The only exception to this clause may be where an urgent Variation is verbally requested by a representative of the Customer on Site, however, it will be at the Contractor's sole discretion as to whether this Variation will be completed and on what terms (including an amendment to the Price).

5. INVOICES & PAYMENT

- 5.1 The Contractor reserves the right to require payment of a deposit of a specified sum or credit card information of the Customer prior to commencement of work.
- 5.2 Where the Customer does not have a preapproved credit account with the Contractor, the following applies:
 - 5.2.1 The Contractor will issue a tax invoice for the Works, setting out the service performed, including any Variation and the date the service was performed. The tax invoice will also separately identify all expenses and any GST payable. This tax invoice will include the final Price for the services performed and any goods provided. This Price may vary from the quoted Price if Variations have taken place in accordance with these Terms & Conditions.
 - 5.2.2 The Customer will make full payment of the Price within the time frame set out in the relevant tax invoice.
- 5.3 Where the Customer has a preapproved credit account with the Contractor, the following applies:
 - 5.3.1 The Contractor will issue a tax invoice for the Works in accordance with Clause 5.2.1 above.
 - 5.3.2 Whenever a tax invoice is submitted by the Contractor, the Customer must make full payment of the Price within either 14 days or 30 days from the date of the invoice, whichever time period is communicated to the Customer by the Contractor at the Contractor's discretion.
- 5.4 Despite the preceding clauses, the Customer acknowledges that all costs for the following works are payable in full to the Contractor prior to the Contractor's attendance/commencement of work:
 - 5.4.1 Call out fees;
 - 5.4.2 Attendance fees;
 - 5.4.3 Initial inspection fees; and
 - 5.4.4 Service fees.
- 5.5 Despite the preceding clauses, the Contractor reserves the right to require regular process payments from the Customer.
- 5.6 The Customer acknowledges the following:
 - 5.6.1 After hours call outs and emergency services will be charged at the Contractor's applicable rates; and
 - 5.6.2 In the event that the Contractor attends and determines that the requested Works cannot be completed at the time of a call out for any reason whatsoever, the Contractor's return visit to complete the requested Works will be charged at the Contractor's applicable rates in addition to the initial call out fee, whether that be at the Contractor's high rate for after hours work or its normal rate for within business hours.
- 5.7 Payment of the Contractor's tax invoice must be made in any of the following manner: credit card, cheque, electronic transfer to the Contractor's bank account, or cash.

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- 5.8** Should the Customer neglect or refuse to pay any amount of any tax invoice by the due date, then the Contractor may, at its option, with or without notice to the Customer and without limiting any other rights the Contractor may have at law:
- 5.8.1** Suspend the Customer's account and any requested Works until such payment has been received in full;
 - 5.8.2** Retain possession of any certificate relating to the standard of the Works until such payment has been received in full; and
 - 5.8.3** Engage legal assistance, institute proceedings and/or engage a debt collector to enforce such payment and the Customer indemnifies the Contractor for any costs incurred by the Contractor in recovering the outstanding amount, including but not limited to debt collector and/or legal fees.
- 5.9** In the event that the Customer does not agree with the Price set out in an invoice provided to them by the Contractor, they must bring this matter to the Contractor's attention within seven (7) days of the date of the invoice. Otherwise, the Customer has accepted the Price.
- 5.10** The Customer is not entitled to deduct any Price from any amounts owing to the Customer by the Contractor.
- 5.11** The Customer acknowledges that the Contractor may amend their rates from time to time and that the Contractor has no obligation to advise the Customer upon any amendment of their rates.

6. INCREASED COSTS

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 to 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 5.

7. RISK & OWNERSHIP

- 7.1** In connection with the equipment and materials, the Contractor states to the Customer that:
- 7.1.1** The Contractor has the right to supply the equipment and materials to the Customer; and
 - 7.1.2** The activities of the Contractor in supplying the equipment and materials do not infringe the rights of the owner of the materials (where the Contractor is not the owner of the materials).
- 7.2** The Contractor retains title to any equipment, materials and services (even if the Customer goes into liquidation or becomes bankrupt) related to any unpaid invoice until the payment of the Price is received in full.
- 7.3** The Customer acknowledges and agrees that until full payment of the Price is received by the Contractor:
- 7.3.1** The Contractor has an interest in the equipment and materials installed by the Contractor capable of registration pursuant to the *Personal Property Security Act 2009* (Cth) and that the Contractor may elect to register such interest;
 - 7.3.2** The Customer consents to such registration and will promptly provide any information, documentation or assistance that the Contractor may require to perfect registration of its interest; and
 - 7.3.3** The equipment and materials constitute commercial property and the Customer waives its right to receive notification from the Contractor of the registration of its interest pursuant to the *Personal Property Security Act 2009* (Cth) ("PPSA").
- 7.4** While the equipment, materials and services remain the property of the Contractor, the Customer agrees that:
- 7.4.1** The Customer is not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest or lien over, or otherwise deal with any equipment, material or service supplied in any way;

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- 7.4.2** The Customer has no right or claim to any interest in the equipment, materials or services to secure any liquidated or unliquidated debt or obligation the Contractor owes to the Customer;
- 7.4.3** The Customer will not create any security interest in the equipment or materials in relation to any third party except as may be authorised by the Contractor;
- 7.4.4** Where the Customer is in actual or constructive possession of the equipment or materials the Customer will not deliver them or any document of title to the equipment or materials to any person and must not remove, deface or obliterate any identifying plate, mark or number except as directed by the Contractor;
- 7.4.5** The Customer 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; and
- 7.4.6** The Customer is in possession of the equipment or materials as a bailee of that equipment or those materials and owes the Contractor the duties and liabilities of a bailee.
- 7.5** If the Customer supplies any of the equipment or materials to any person before all moneys payable by the Customer have been paid to the Contractor, the Customer agrees that:
- 7.5.1** It holds the proceeds of re-supply of the equipment or materials on trust for and as agent for the Contractor immediately when they are receivable or received;
- 7.5.2** It must either pay the amount of the proceeds of re-supply to the Contractor 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 the Contractor;
- 7.5.3** Any accessory or item which accedes to any of the equipment or materials by an act of the Customer or of any person becomes and remains the property of the Contractor until the Contractor is paid in accordance with Clause 5 when the property in the materials (including the accessory) passes to the Customer;
- 7.5.4** If the Customer fails to pay the Price within the period as stated in the Contract, the Contractor may recover possession of the equipment or materials at any site owned, possessed or controlled by the Customer and the Customer agrees that the Contractor has an irrevocable licence to do so and to dispose of the equipment or materials to recover costs if the Customer breaches these Terms & Conditions or any Contract between the parties.
- 7.1** Despite what is otherwise provided for in these Terms & Conditions, risk of loss, damage or destruction to the materials, equipment and Electrical Article or any part thereof shall pass to the Customer on installation.

8 EXTENSION OF TIME

- 8.1** The Contractor's Quotation is based on a continuous work programme, unless otherwise stated. If the Customer causes the Works to be delayed, then the performance of the Contractor's obligations under these Terms & Conditions or any Contract between the parties shall be suspended for the period of such delay and the Completion Date shall be extended accordingly.
- 8.2** Where the Contractor has been granted an extension of time under this clause, the Customer shall pay to the Contractor such extra costs as are necessarily incurred by the Contractor by reason of the delay, including, but not limited to, any loss of profits.

9 DELAY

The Contractor shall not be liable for any delay or failure to perform its obligations under these Terms & Conditions 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** any act, default or omission on the part of the Customer, its employees and/or agents; or
- 9.2** any events occurring on or before Completion Date including but not limited to:-

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- 9.2.1 Damage by fire, explosion, earthquake, lightning, storm, flood, civil or military authority, public enemy, war, civil commotion, strikes, labour disputes or industrial conditions;
 - 9.2.2 Electric power supply failure;
 - 9.2.3 Inclement weather;
 - 9.2.4 Unavailability of suitable materials or parts;
 - 9.2.5 Failure of transportation affecting the Contractor, its supplier or any other person, company or firm;
 - 9.2.6 Latent conditions;
 - 9.2.7 Variations directed by the Customer;
 - 9.2.8 Changes in the law; or
 - 9.2.9 Directions or delays by municipal, public or statutory authorities.
- 9.3 The Customer will do all things to ensure that the Contractor is not delayed by matters within the control of the Customer. The Customer accepts that the Contractor has the right to impose stand down charges and recover additional costs incurred where work is delayed by reason not in the control of the Contractor and where the Contractor is unable to reasonably reschedule services.

10 WORKING HOURS

All work will be carried out during normal working hours (7.30am-4.00pm Monday to Friday) unless otherwise stated. The Customer agrees that should the Customer require the Contractor to carry out any of the works outside of the nominated hours, then the price will be increased to reflect award penalty rates for that part of the works performed outside of the nominated hours and the Customer shall pay the increased Price to the Contractor in accordance with the provisions of Clause 5.

11 RISK, ACCESS & DELIVERY OF GOODS

- 11.1 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the relevant Electrical Safety Regulations. All of the cabling work will comply with the Australian and New Zealand wiring standards.
- 11.2 If during the course of installation when the Works are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by the Contractor, then the Contractor shall notify the Customer immediately. The power, if isolated, will not be re-energised until such time as the existing condition has been rectified and made safe in accordance with the relevant Electrical Safety Regulations. The Customer accepts and agrees that any costs associated with the rectification Works, including any materials and labour, shall be to the Customer's account.
- 11.3 The Customer shall ensure that the Contractor has clear and free access to the work site at all times to enable them to undertake the Works.
- 11.4 The Contractor shall not be liable for any loss of damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Contractor.
- 11.5 At the Contractor's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 11.6 The Customer must take delivery by receipt or collection of the goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the goods as arranged then the Contractor shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 11.7 Further to Clause 11.6, in the event that the Customer fails to make the premises available to the Contractor at the pre-arranged time, the Contractor reserves the right to charge the Customer for any costs incurred as a result of the Customer's failure, including, but not limited to, any loss of profits.
- 11.8 The Contractor may deliver the goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these Terms & Conditions.

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11.9 Any time or date given by the Contractor to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and the Contractor will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

12 GST

12.1 The Contractor warrants that as at the date of these Terms & Conditions, the Contractor is registered under the GST Act and that the Contractor is not aware of any circumstances existing which would require the Commissioner of Taxation to cancel the registration.

12.2 Unless otherwise expressly stated, any amounts communicated to the Customer in any form are exclusive of GST and the Customer is excepted to pay the amount plus GST to the Contractor.

13 DISPUTE RESOLUTION

Other than a dispute in relation to a Price (which is provided for in Clause 5.9), any dispute between the Customer and the Contractor arising under, or in connection, with these Terms & Conditions or any Contract between the parties, shall:

13.1 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

13.2 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:

13.2.1 the Consumer Trader and Tenancy Tribunal; or

13.2.2 the Electrical and Communications Association if the Contractor is a member of same.

14 INSURANCE

The Contractor shall affect and shall maintain during these Terms & Conditions, Public Liability Insurance to a value of not less than \$20,000,000 and WorkCover Insurance in accordance with the requirements of the applicable legislation for all employees.

15 OCCUPATIONAL HEALTH AND SAFETY/WORKPLACE HEALTH AND SAFETY

15.1 The Customer will ensure that, if the service is to be performed on the Customer's property, the Customer is authorised to occupy those premises and obtain the service.

15.2 The Customer will ensure that if the service is to be performed on the Customer's property, that at all times the property is safe and that all facilities provided by the Customer for the purposes of enabling the service to be performed are also safe. The Customer is responsible for ensuring that the Contractor has access to a reasonable quantity of potable water for drinking and hygiene purposes.

15.3 The Contractor will ensure that at all times in performing the service it uses safe and proper procedures and practices and that all its employees are properly trained and supervised and observe all proper safety practices. Where protective equipment, materials or clothing are required these will be provided by the Contractor and the Contractor will ensure that these are used at all relevant times.

16 BOOKING SYSTEMS AND WEBSITE

16.1 The Customer acknowledges that the Contractor may utilise an AI driven booking system to complete administrative tasks in their business.

16.2 The Customer consents to such a system collecting and storing its personal data provided to it or the Customer.

16.3 The Customer indemnifies the Contractor for any loss the Customer may suffer as a result of this system, including but not limited to any breach of privacy or any loss suffered (e.g. loss of income) in the event of the system double booking appointments.

16.4 The Customer acknowledges that no professional advice has been provided to them until such time as the relevant Quotation has been accepted by the Customer.

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16.5 In the event of any discrepancy between these Terms & Conditions and the Contractor's advertising, including but not limited to the Contractor's website or social media pages, these Terms & Conditions shall prevail.

17 INTELLECTUAL PROPERTY

17.1 In these Terms & Conditions, Intellectual Property means: all present and future rights, whether registered or not, in relation to inventions and improvements, patents, trademarks, designs, copyright, any corresponding property rights under the laws of any jurisdiction and any rights in respect of a discovery, trade secret, secret process, know-how, concept, idea, information, process, data or formula, and rights to require information to be kept confidential, including all rights to apply for any of the above, and all records and materials containing or embodying such.

17.2 The Customer agrees that all Intellectual Property of the Contractor remains the property of the Contractor.

18 WARRANTY AND INDEMNIFICATION

18.1 The Contractor grants the Customer a Defects Liability Period for workmanship alone.

18.2 The Contractor grants no warranty for equipment, materials or any Electrical Article whatsoever. Equipment and materials may only be subject to the relevant manufacturer's warranties and the Customer acknowledges they must direct any concerns direct to the manufacturer. It is the Customer's responsibility to establish the warranty relationship with the manufacturer by ensuring that warranty cards or other registration requirements of the manufacturer of any equipment, material or Electrical Article supplied or installed by the Contractor are complied with.

18.3 The Customer acknowledges that the Customer will charge for its labour for any Works requested of the Contractor to attend, fault find and/or rectify any issue in the equipment or material in the event that the manufacturer does not offer the necessary warranty.

18.4 The Customer shall indemnify and hold the Contractor harmless from and against:

18.4.1 Any damage to or loss of real or personal property of the Customer or its employees, agents, subcontractors or customers;

18.4.2 Death, illness or personal injury to the Customer or their employees, agents subcontractors or customers;

18.4.3 Any damage to or loss of real or personal property of any party;

18.4.4 Death, illness or personal injury to any party;

18.4.5 Losses, damages, costs (including all legal costs), expenses, claims, demands or causes of action arising out of, or in any way connected with the Subclauses above; and

18.4.6 to the extent arising out of or in relation to the Works or otherwise due to any act or omission of the Contractor, its employees or agents;

unless as a result of the negligence or wilful act of the Contractor, their employees or agents.

18.5 Without limiting the foregoing, the Customer shall indemnify and hold the Contractor harmless from and against any loss the Customer or any third party may suffer as a result of any loss of video surveillance or failure of video surveillance to capture a particular area/incident however caused.

19 DEFINITIONS

Definitions In these Terms & Conditions and in any instrument created pursuant to or in accordance with it, unless the context otherwise requires:

Contract Documents include all drawings, plans and specifications and all other information provided by the Customer to the Contractor;

Contractor means Jatim Pty Ltd trading as Barnes Electrical Service (ABN 90 082 871 707);

Contract means the contract to carry out the Works between the Customer and the Contractor by the acceptance of the Quotation by the Customer and includes these Terms & Conditions;

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Customer means the customer stated in the Quotation or invoice;

Completion Date means the date for completion of the Works under the Contract;

Defects Liability Period means the period of 12 months from the date of the completion of the Works;

Electrical Article has the meaning of any electrical article connected to, and extending or situated beyond, any electrical outlet socket;

GST Act means the Act titled A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended from time to time;

GST has the meaning given to this term by the GST Act;

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 Contract is entered into; and
(b) for the cost of supply and delivery of which a reasonable allowance is, or is to be, made in the Contract by the Contractor.

Provisional Sum is the amount that is the Contractor's estimate of the cost of performing the Works, in relation to Works for which the Contractor, after making all reasonable enquiries, cannot state a definite amount when the Contract is entered into;

Site means where the works under the Contract are carried out;

Terms & Conditions means these terms & conditions;

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 the Works, the commencement and completion dates of the Works, the price of the Works and the insurance cover held by the Contractor in relation to the performance of the Works;

Variation means to vary the Works by:

- (a) carrying out additional work;
- (b) omitting any part of the Works; or
- (c) changing the scope of the Works.

20 INTERPRETATION

In these Terms & Conditions and any instrument created pursuant to or in accordance with these Terms & Conditions, unless the context otherwise requires:

- 20.1** a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provisions substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- 20.2** the singular includes the plural and vice versa;
- 20.3** a reference to a person includes an individual and a corporation, partnership, joint venture, association, authority, trust, State or Government and vice versa;
- 20.4** a person includes the legal representatives, successors and assigns of that person;
- 20.5** a reference to any gender includes all genders;

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- 20.6** a reference to a recital, clause, schedule, annexure, appendix or exhibit is to a recital, clause, schedule, annexure, appendix or exhibit of or to the Contract;
- 20.7** a recital, schedule, annexure, appendix or exhibit or description of the parties forms part of the Contract;
- 20.8** a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- 20.9** where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- 20.10** where an expression is defined anywhere in these Terms & Conditions it has the same meaning throughout;
- 20.11** a reference to "dollars" or "\$" is to an amount in Australian currency;
- 20.12** all headings throughout these Terms & Conditions have been inserted for the purpose of ease of reference only and will not define, limit or affect the meaning or interpretation of these Terms & Conditions or of any instrument created pursuant to or in accordance with these Terms & Conditions.