

# Standard Conditions of Contract

## 1. Definition and Duration

These conditions form part of the contract with Delgo Pty Ltd, trading as Westwide Electrical Services ('Westwide') and the Client contracting their services. Westwide will supply the Services (described in the quotation) for the Contract Sum (also described in the same). This quotation may only be accepted by written notice to Westwide within 45 (forty five) days of the date of the quotation and, if not so accepted, Westwide reserves the right to revise or withdraw it.

## 2. Representation, Undertakings, and Warranties of the Client to the Vendor

2.1 Prior to the creation of a binding contract under Clause 3,

2.1.1 the Client represents that:

- (a) It complies with (where relevant) all relevant Australian Standards relating to occupational health and safety and environmental management systems, and
- (b) It has taken (where relevant) all reasonable precautions to ensure the safety and security of all personnel acting on site through the implementations of relevant policies and systems.
- (c) It has read and understood and accepts the provisions of this contract and its conditions, and agrees to be bound by same.

2.1.2 the Client warrants that:

- (a) It has the ability and capacity to pay for the Services rendered by Westwide, and
- (b) It will provide a guarantee (in a format acceptable to Westwide) relating to payment if and when requested by Westwide to do so.

2.1.3 the Client undertakes to:

- (a) Keep and maintain any and all insurance policies dealing with or concerning the subject of this contract, and the site on which Westwide (including its employees, contractors, agents and representatives) is to discharge any of its responsibilities and duties arising from this contract, and
- (b) Ensure that Westwide is fully updated and informed of any and all matters relating to the subject of this contract, where those matters may have any effect or impact on the works to be undertaken under this contract.

2.2 The provisions of Clause 2.1 are conditions precedent to the creation of any and all contractual obligations between Westwide and the Client.

## 3. The Contract

3.1 Upon acceptance of this quotation, a binding contract ("the contract") shall be created between Westwide and the Client solely on these terms contained herein, including the terms contained in Westwide's quotation.

3.2 No change in the terms of the contract shall be effective unless agreed in writing by Westwide. The waiver by Westwide of a term or a breach of any of these terms shall not be deemed to be a waiver of any other term or any subsequent breach of that or any other term.

## 4. Terms of Payment

3.1 The terms of payment by the Client are strictly 30 (thirty) days from end of month, where Westwide has approved the Client for credit. In all other circumstances, the terms are Cash on Delivery (COD).

## 5. Cost Adjustment

5.1 If the Services are to be supplied within three months after acceptance of this quotation, then no cost adjustment shall apply, however, if the Services are not to be supplied within that period, then the contract price shall be subject to adjustment for rise and fall in the costs of labour and materials, calculated on the proven costs of labour and material increases or decreases.

5.2 Westwide shall be entitled to apply a cost adjustment in circumstances where the Client requires Westwide and/or its employees to comply with specific site safety procedures, including, but not limited to, inductions. The adjustment shall be in recognition of the time and costs incurred by Westwide in complying with these requests.

## 6. Delays and Extension of Time

6.1 If Westwide is delayed in the supply of the Services due to any cause beyond his control (including, but not limited to, acts of God, strikes, lockouts or other industrial disturbances, fire, flood, explosion or laws, rules, regulations or orders of any Government authority or delays caused by any other person, company or authority), Westwide shall be entitled to a reasonable extension of time to supply the Services while such cause exists and the provisions of Clause 5 shall apply in relation to same.

6.2 If any such cause (as identified in Clause 6.1) continues for six months or more, either party may by notice in writing to the other terminate the contract, and that termination of the contract shall not affect the rights and obligations of either party which accrued prior to such termination.

6.3 If Westwide's responsibilities under this contract are interrupted, hindered, prevented or stultified as a result of the Client's inability or refusal, for whatever reason, to comply with any work schedule or plan:

6.3.1 the Client shall not be entitled to delay progress payments (if any) or otherwise postpone payments to Westwide when they fall due as originally agreed, and

6.3.2 Westwide shall be entitled to add to the contract sum:

(a) the amount of any additional costs in materials, labour and overheads incurred as a consequence of delay with a reasonable allowance for profit margins, and/or

(b) the total cost of any additional term of hire for any tool or machine obtained by Westwide for the purposes of this contract where that tool or machine would require an extension of the hire agreement as a result of the delay, and

6.3.3 Westwide will be entitled to a reasonable extension of time to complete under the circumstances.

## 7. Materials, Details and Dimensions (in relation to Services which are or utilize tangible goods)

7.1 The Client – before accepting this quotation – acknowledges that adequate care has been taken to ensure that the Services requested are of the correct type, size, rating, standard, quality, colour, finish, and fit for purpose, and express the full requirements and conform to any specifications and drawings against which the quotation was submitted.

7.2 The Client shall provide Westwide with all necessary information, including, but not limited to, dimensions and locations, in

adequate time to enable Westwide to produce the Services in accordance with the contract.

## 8. Variations (in relation to Services which include the provision and utilization of tangible goods)

8.1 If the Client requests any variation in the Services during the contract, including but not limited to any variation in materials or dimensions, Westwide shall, in accepting the variation, be entitled to increase or decrease the contract sum to take account of the costs of such variation, as the case requires (including an allowance for materials already manufactured or procured, or work already done, but not required) and shall be entitled to a reasonable extension of time to supply the Services, as varied.

8.2 If the cost to Westwide of supplying, or having supplied the Services increases or decreases because of changes in statutory, government or semi-government charges, taxes, rates, levies or imposts with respect to Westwide or the Services or changes in currency exchange rates, the contract sum shall be increased or decreased to the extent of such changed costs.

8.3 Where extra cost in materials, labour and overhead is occasioned to Westwide by virtue of acceleration of the agreed delivery date and time or of the presence of obstructions or conditions which could not reasonably have been anticipated by Westwide, it shall be added to the contract sum.

8.4 The Client agrees that it will respond to Westwide's claims for variations reasonably and promptly and that should it either fail to accept any claim for a variation from Westwide within ten (10) working days of receiving it or fail within the same period to give to WESTWIDE in writing a reasonable explanation for not accepting such claim, then the amount of such claim shall be added to the contract sum.

## 9. Handover (in relation to Services which are tangible goods)

9.1 Subject to Clause 9.2, upon delivery of the Services, the Services shall thereafter be at the Client's risk and delivery will be deemed to be complete.

9.2 If the Client has paid for the Services prior to delivery of the Services, the property in the Services shall pass to the Client upon its acceptance by the Client. In all other circumstances, property shall remain that of Westwide until payment in full for the Services has been received by Westwide.

## 10. Retention of Title (in relation to Services which are tangible goods)

Until payment in full is received by Westwide and property in the Services passes to the Client, the Client shall hold the Services as bailee for Westwide.

## 11. Commissioning

Unless otherwise agreed in writing, Westwide's responsibilities in respect of commissioning the Services shall be limited to proving conformance of the Services with the specification supplied by the Client.

## 12. Claims Against Westwide

12.1 Any claim which the Client may have against Westwide shall be deemed to be waived if not made in writing within ten (10) working days from the date of the event giving rise to such claim.

- 12.2 Westwide shall not be liable for any damage to materials or the Services caused by the Client or third parties.
- 12.3 Unless otherwise agreed in writing, Westwide shall not be liable to pay pre-ascertained or liquidated damages.
- 12.4 Westwide will not accept the return of, or give credit for, any goods supplied in accordance with the contract, except where explicitly agreed by Westwide in writing.
- 12.5 Westwide shall not be liable for any delay caused in consequence of proceedings being taken or threatened by, or disputes with, adjoining or neighbouring landowners and the provisions of Clauses 5 and 6 shall apply.
- 13. Westwide Warranties and Exclusions**
- 13.1 Westwide warrants that all materials and workmanship comprising the Services shall be of good quality.
- 13.2 Westwide will rectify any defects in materials or workmanship of Westwide appearing in any of the Services within twelve months of delivery of those goods, provided that the Client took reasonable steps to inspect the Services prior to delivery and satisfy itself as to the condition of the Services.
- 13.3 The provisions of Clauses 13.1 and 13.2 are excluded where:
- (a) Any third party materials or workmanship is supplied by that third party to Westwide and incorporated in the Services, or
  - (b) Modifications or alterations to the Services have been made by the Client or a third party, or
  - (c) Alleged defects appearing in the Services are the result of the use of faulty materials or workmanship by the Client or a third party, or attributable to the activities of other trades, structural loads, vandalism or maltreatment.
- 14. Limitation of Liability**
- 14.1 Westwide shall not be liable in contract or in tort or otherwise arising, for any consequential, special or contingent damages which may be claimed to have resulted from any of Westwide's actions, omissions, performance or failure to perform any obligation under the contract.
- 14.2 The exclusions, releases and indemnities in this Contract extend to loss of profits, business or anticipated savings and any other indirect or consequential damage and to economic loss; even if Westwide knows they are possible or otherwise foreseeable.
- 14.3 Notwithstanding anything to the contrary, in no circumstances whatsoever shall Westwide be liable in contract or in tort or otherwise, for loss, expense or damages incurred, sustained or suffered by the Client in an amount exceeding 10% in monetary value of the contract sum.
- 15. Insurance**
- Any insurance affected by Westwide in relation to the Services shall cover Westwide's interests only.

**16. Default**

- 16.1 Westwide may withhold delivery of the Services, or terminate the contract and repossess any goods not yet paid for by the Client if the Client either
- (a) fails to perform or observe any term of the contract (including the terms of payment), or
  - (b) enters into an agreement or arrangement with its creditors or,
  - (c) being an individual, commits an act of bankruptcy or is made bankrupt, or,
  - (d) being a company, resolves or is ordered to be wound up or has a liquidator, receiver, receiver and manager or official manager or administrator appointed for all or any part of its assets.
- 16.2 Such suspension or termination as described in Clause 16.1 shall not affect any rights of Westwide accrued against the Client, and Westwide shall be entitled to be reimbursed for any loss or damage sustained as a result of the default of the Client, including any loss sustained through the suspension of delivery and subsequent resumption of the Services.

**17. Cancellation**

If the Client requests cancellation of the contract, he/she shall pay for work done pursuant to the contract to the date of such request and shall pay Westwide compensation for all losses (including consequential losses, lost profits and the loss of prospective profits) suffered by it as a result of such cancellation.

**18. Intellectual Property**

The Client acknowledges and agrees that all intellectual property in the Services remains the property of Westwide and this contract does not confer any rights or licenses in relation to any intellectual property in the Services and the Client shall take or cause to be taken such reasonable precautions as may be necessary to any intellectual property in the Services.

**19. Confidentiality**

The Client shall keep secret and confidential and shall not disclose to any third party without the prior written consent of Westwide any information, data, specification, drawings, reports, accounts or other documents and things supplied or made available by Westwide to the Client or brought into existence by Westwide for the purpose of the manufacture or supply of the Services and the Client shall take or cause to be taken such reasonable precautions as may be necessary to maintain secrecy and confidentiality and prevent disclosure, including obtaining confidentiality agreements from its employees, agents and subcontractors.

**20. Assignment and Subletting**

Neither party shall assign the contract in whole or in part without the prior written approval of the other party, but Westwide

shall be entitled to subcontract the contract wholly or in part.

**21. Implied Terms**

No warranty, condition or representation, other than those contained in these terms and conditions shall be included in this contract by implication, statute or otherwise, but nothing contained here shall be deemed to attempt to exclude, restrict or modify any implied warranty or condition in relation to the Services and services to be supplied by Westwide, the exclusion, restriction or modification of which would pursuant to any statute render this clause or anything contained here void or illegal.

**22. Indemnity**

The Client shall be responsible for and shall indemnify and keep indemnified Westwide and its directors, officers and employees from and against liability for all loss damage or injury to persons or property caused by the Client or its servants, employees, agents or subcontractors (including any loss, damage or injury which may be suffered by the Client or any of its employees, agents or others engaged by the Client) arising directly or indirectly out of the performance of the Contract and/or in connection with this Contract and the amount of all actions, proceedings, claims, damages, costs and expenses which may be taken or made against Westwide (or which Westwide incurs or which become payable by Westwide) in respect of any such loss, damage or injury shall be made good at the Client's expense and shall be a debt due and payable immediately by the Client to Westwide, and the Client authorises that any amount may be deducted from any money due or becoming due to the Client.

**23. Governing Law**

Both parties agree that these terms and conditions are governed by the laws of Western Australia and are to be construed as such. Both parties submit to the exclusive jurisdiction of Western Australia.

**24. Disputes**

- 24.1 In the event that a dispute arises between Westwide and the Client in relation to this contract, both parties undertake to engage in good faith negotiations with a view to a resolution.
- 24.2 In the event that a resolution has not been achieved under Clause 24.1, the parties agree to submit to the processes of Alternative Dispute Resolution (the choice of process being elected by the aggrieved party) before a party files an originating process in court.

**25. Severability**

If any condition or part of a condition of this contract is unenforceable, then that condition or part is to be severed from the contract and the enforceable conditions and parts remain unaffected and are to be read as a complete contract.