

## TERMS AND CONDITIONS

### 1 Definitions

- Customer - The person who orders or agrees to buy goods or services from the Contractor.
- Contractor - ETE Electrical Contractors Ltd. Cornflower House, Cornflower Close, Maidstone, ME14 5UL
- Tender - Tender, estimate or quotation given to the Customer by the Contractor.
- Materials - The articles which the Customer agrees to buy from the Contractor as part of the Tender.

### 2 General

- 2.1 Acceptance of the Tender includes acceptance of the following terms and conditions.
- 2.2 **Property Insurance:** The customer will advise his own building and contents insurer of the nature and extent of the works and any supplementary details the insurer or any third party may require
- 2.3 **Customer Satisfaction.** The contractor will follow the ECA Code of Fair Trading. The customer will inform the contractor of any defects, deficiencies or disputes **within twenty-eight days** from the completion of the works and will permit the contractor, in the first instance, to use his best endeavours to resolve any problems. Subsequent defects etc., should be notified to the contractor within fourteen days of discovery and similarly, the contractor should be permitted access to the property to both view the deficiency and rectify as appropriate or to have the matter equitably brought to his attention. The Electrical Contractors' Association's free Complaint Conciliation Service or the NICEIC resolution process is available thereafter, suitably referenced complaints being addressed to the ECA's Customer Services Department, Sevenoaks, Kent or the NICEIC Head Office, Warwick House, Houghton Hall Park, LU5 5ZX.
- 2.4 **Alternative Dispute Resolution (ADR).** If The Consumer customer remains dissatisfied by the ECA's Conciliation Service or NICEIC resolution process then both parties may consent to refer the matter to a Registered ADR Entity Mediation Provider, whose details will be provided by the Contractor following the consumer's formal notification that the dispute can, at the consumer's request, be referred to Mediation. Neither party is required, by the Alternative Dispute Resolution Regulations 2015, to defer to Mediation but if the dispute proceeds to litigation, the Court may make its Award to reflect the actions of the parties..
- 2.5 **The Law of England and Wales** shall apply to this agreement. The parties to this agreement do not intend that any of its provisions shall be enforceable by any person by virtue of the Contracts (Rights of Third Parties) Act 1999. Any written notice mentioned above shall only be effective when sent by first-class post to, or delivered at, the last known address of the party to whom it is addressed, or when handed personally to that party

### 3 Period of Tender

The Tender remains open for 30 days unless previously withdrawn. Thereafter the Tender is subject to confirmation or adjustment by the Contractor.

### 4 Basis of Tender

- 4.1 The Contractor will carry out and complete the following work(s) using reasonable skill and care at either the address of the customer or at the works location address. The customer must, at all reasonable times or as agreed, allow access to the work area, until either a works completion certificate is issued or the works are terminated in accordance with clause 10 or 11.
- 4.2 The documents that identify, describe, detail or design this work and on which this price is exclusively based, are all listed in the contractor's tender. The Contractor accepts no responsibility for any drawing, design or specification etc., not prepared by him.
- 4.3 The Contractor / Customer (*Defaults to the Contractor if un-amended*) is responsible for getting any necessary Local Authority approvals, liaising with supply / statutory authorities, arranging inspections and testing, organising and paying all fees, charges or disbursements not identified in clause 4.2 of this agreement. It is the customer's sole responsibility to notify any third parties who may have an interest in the property. Work by other trades is not included in the Tender.
- 4.4 The work will be undertaken as expeditiously as possible. Working Hours (unless otherwise agreed beforehand) will be Monday to Friday, 8.00 am to 5.30 p.m.
- 4.5 The price of the contract is detailed in the Contractor's Tender and is subject to these terms and conditions. If for any reason there is no quoted price, then the Contractor shall be entitled to a reasonable sum based on the Daywork rates mentioned in Clause 12.
- 4.6 All increases or decreases in labour and/or materials cost arising after the date of Tender may be recovered from or allowed to the Customer unless the Tender expressly excludes this condition.
- 4.7 Variations or additional work not previously priced shall be charged on time and materials basis (Daywork rates see Clause 12) unless the subject of a separate quotation is accepted by the Customer.
- 4.8 The contractor will take full responsibility for the work, including any work carried out by his subcontractors. The laying of cables and conduits is by the shortest practicable route. The contractor will put right, at his own expense, any loss or damage caused either by himself or his subcontractors, however whilst reasonable care will be taken, the price/Tender does not include for incidental redecoration or other works consequent upon the proper execution of the work.
- 4.9 The contractor will undertake all reasonable changes to the work but shall not be obliged to do so without written confirmation of the changes being first provided by the customer. The contractor is entitled to make a reasonable charge for the direct (visible) and indirect (consequential) cost of any change. Changes will be valued in accordance clause 14 of this agreement.

### 5 Terms of payment

- 5.1 The contract price excludes V.A.T. which will be added to the bill, at the rate prevailing, at the time of invoice.

- 5.2 This price does not include for any item not specifically identified in the contractor's quotation, or that could not reasonably be inferred as being necessary to complete the works.
- 5.3 The Contractor reserves the right to ask the Customer for a deposit of one quarter (25%) of the contract price on acceptance of the Tender. This is refundable if the customer exerts his/her rights under **Clause 9**, of the agreement (see Clause 9 - The [Cancellation of Contracts](#)) or a payment of 30% of contract price on starting work on site.
- 5.4 After starting work the Contractor will every 14 days or on completion of various aspects of the contract submit applications or invoices for payment of instalments of the contract price (less any part payment received in accordance with 5.3 above, if applicable), showing details of work completed for which payment is claimed, including any adjustments under condition 4.
- 5.5 The customer is aware that the final bill may change from the contract price (see Clauses 4 and 12).
- 5.6 Payment shall be due within 7 days of date of Contractor's application for payment or invoices.
- 5.7 The Customer will pay interest and compensation on any overdue amount at the level and rate set by The Late Payment of Commercial Debts (Interest) Act but with a 50% discount

## **6 Title and risk**

- 6.1 The Materials are at the risk of the Contractor from the time of delivery at the Customers address [as indicated in the Tender].
- 6.2 Notwithstanding the passing of risk as above, ownership of the Materials shall not pass to the Customer until the Contractor has received in full (in cash or cleared funds) all sums due to it in respect of the Materials and all other sums which are or which become due to the Contractor from the Customer on any account.
- 6.3 Until title passes the Customer shall hold the materials as bailee for the Contractor and shall insure them, store or mark them so that they can at all times be identified as the property of the Contractors.
- 6.4 The Contractor may bring an action for the price of any Materials notwithstanding that title in them has not passed to the Customer.

## **7. Completion**

- 7.1 The Contractor shall endeavour to carry out the work within the period stipulated or, if no period is stipulated, within a reasonable time, but shall not be held responsible for any loss or damage arising out of delay due to any cause beyond the Contractor's control.

## **8 Consequential loss or damage and limitation of liability**

- 8.1 Without prejudice to the Customer's statutory rights, the Contractor will pass to the Customer the benefit of any guarantees the Contractor has received in respect of Materials supplied by the Contractor (so far as it is able) and undertakes to repair or, as necessary (at the Contractor's sole discretion), replace free of charge any Materials or work found to be defective if the defect is due to faulty workmanship by the Contractor or subcontractors and is brought to its attention within 12 months of the completion of the work, provided nevertheless that:
- 8.1.1 The Contractor will not be liable for rectifying or replacing defective materials, equipment or goods provided by the Customer and incorporated into the works by the Contractor. During the course of the works, any such rectifying or replacing will be ordered by the Customer and the Contractor paid in accordance with the conditions in the contract for valuing and paying for variations. Any such rectifying or replacing will be the subject of a separate agreement between the Customer and the Contractor. Should the quantities of materials, equipment or goods provided by the Customer be disproportionate to the requirements of the works, the Contractor will not be responsible nor will he have responsibility for calculating quantities or bear the cost of waste.
- 8.1.2 All unfixed materials, equipment and goods on site provided by the Customer and intended for incorporation into the works by the Contractor shall be at the Customer's risk as regards any loss or damages howsoever caused.
- 8.2 The Contractor will meet legal insurance requirements for the Contractor's employees; and will provide suitable cover against injury to third parties or damage to third party property under a policy of public liability insurance, to a maximum value of £5 million. The Contractor's contribution (if any) to any losses, claims or counterclaims suffered or made by third parties, is capped at a maximum value of £1 million, unless otherwise agreed in writing between the Contractor and the Customer.
- 8.3 The Contractor shall not be liable for any wear and tear, loss or damage, direct or indirect, nor for any extra work entailed due to the apparatus being put into operation by the Contractor or subcontractors at the Customer's request before it is handed-over for beneficial use.
- 8.4 The repair or replacement of any faulty work or Materials shall only be carried out by the Contractor, his servants, or agents: otherwise the Contractor's warranties as to repair or replacement shall not apply.
- 8.5 The Contractor will take reasonable care but accepts no liability for damage to furniture or other fixtures and fittings, which have to be moved, by the Contractor or his workman in order to carry out the contract works. Without prejudice to this the Contractor will maintain adequate Public Liability Insurance cover for least the duration of the contract. It is the customer's responsibility to remove and / or protect all furniture, fixtures and fittings likely to be affected by the contractor's work. The customer will ensure that no item, goods or materials of value, either sentimental or financial, are left on the premises during the period of the works. The customer must appreciate that dust, vibration and noise will accompany the works.
- 8.6 Where the Tender involves the Contractor installing fixed wiring and /or working on portable appliances and or equipment, it is the sole responsibility of the Customer to show the Contractor where such portable appliances and or equipment are on site. Where an appliance and/or equipment is not brought to the Contractors attention it will not be liable for such appliance and/or equipment in any way. Further the Contractor will not be responsible in any way for any loss of data from any portable appliance and/or equipment worked on by the Contractor or resulting from the installation of the fixed wiring.

**9 Right to Cancel - The Consumer Contracts ('Cancellation' and additional Charges) Regulations 2013.**

- 9.1 The Customer has the statutory right to cancel this agreement within 14 days of signing the contract or accepting the Tender. He will not then be charged for any goods, services or credit agreements entered into that relate to this contract. The cancellation must be in writing and comply with this clause.
- 9.2 The Contractor is not required to perform the contract until the 14 day 'cooling-off' period has passed, except when the customer issues an instruction in accordance with the '**Instruction to start work during the Right to Cancel Period**' as the form attached – Schedule 1.
- 9.3 The Customer may use the '**Cancellation form**' – Schedule 2, to cancel the contract any time within the 14-day period. It is sufficient for you to send your communication concerning your exercise of the right to cancel before the cancellation period has expired. The cancellation notice must quote the Trader reference number and be sent to the Contractor.
- 9.4 The notice of cancellation must be delivered by hand, posted by first class post, or emailed. There are no obligations to ensure that it is received. The Contractor asks the Customer, should he wish to cancel, to telephone the Contractor to confirm his intentions.
- 9.5 If the Customer cancels this contract during the cooling-off period, then except for where the form Schedule 1 has been employed, the contractor will refund any money paid in connection with the contract. Where cancellation occurs within the 14 day period but after form Schedule 1 has been employed, the refund will be in accordance with clause 9.6
- 9.6 The customer will pay, to the date of cancellation, all costs of goods and services delivered and/or rendered to that date. The Contractor may, at his sole discretion, refund the customer the contractor's purchase cost of recovered stock. All costs to be calculated by reference to Clause 12 **Daywork**. The contractor agrees to act in 'good faith' during the period following the cancellation.
- 9.7 Cancellation of this contract, under this clause, will also cancel any related credit agreement.

**10 The Customer may end the contract by written notice to the Contractor if the Contractor:**

- 10.1 fails, without reasonable cause, to carry out and/or complete the work with reasonable skill, care and progress; or fails, without reasonable cause, to follow the customer's instructions, for 14 days after receiving a first written notice from the Customer specifying the failure; or
- 10.2 goes into bankruptcy, administration, C.V.A .or liquidation.

In any of such cases, the Contractor must stop working, and another contractor may be employed to complete the agreed works. All unfixed material must be returned, by an appropriate means, to the original contractor. The cost of termination, repatriating materials and employing a new bone fide contractor, to complete the works, will be deducted from any amount due to be paid to the contractor.

**11 The Contractor may end the contract by written notice to the Customer if the customer:**

- 11.1 delays the work for 4 weeks or longer without reasonable cause, except by previous agreement; or does not make the agreed stage payments for work that has been completed to the Customer's satisfaction for 14 days after receiving a written notice that the payment period is overdue; or
- 11.2 goes into bankruptcy

In any such case the Customer must pay for the work already carried out, as well as for goods and materials legitimately purchased for the work (whether left at the place of work or not). The contractor may credit, at his sole discretion, the value of any unused materials.

**12 Daywork** - Payment for works not included in the contract price will either be:-

- By agreement i.e. priced and agreed before works start or,
- Measured, valued and paid on a Daywork basis. Rates will be applied to all hours committed in the delivery of the additional works and shall be those current at the time that the work is undertaken. They shall comprise the following. The prime cost of such work as defined by the 'Definition of Prime Cost of Daywork carried out under an Electrical Contract' issued by the Royal Institution of Chartered Surveyors (R.I.C.S) and The Electrical Contractors' Association (3<sup>rd</sup> Edition) with percentage additions as set out in our offer or if the documentation is silent, then at the following additional rates: Labour + 95%, Materials and Goods + 15%, Plant (tools and equipment) + 15%.

Schedule 2

<b>Notice of Right to Cancel</b>	<b>DATE:</b>	<b>Reference No.</b>
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You have the right to cancel this contract within 14 days of having received this notice. If you so wish you **MUST DO SO IN WRITING** and deliver personally or send (by first class post or email) this to the person identified here. You may use this form but you do not have to. Ensure you quote the estimate or quotation reference number.

ETE Electrical Contractors Ltd  
 Unit A Cornflower House  
 Cornflower Close  
 Maidstone  
 Kent  
 ME14 5UL

***I / We hereby give notice that I/We wish to cancel my / our contract with you for the provision of .....goods / services, ordered on the Date .....***

**Signed:** - - - - -

**Name:** - - - - -

**Address:** - - - - -

**Date:** - - - - -

✂ .....

Schedule 1

<b>Instructions to start work during the Right to Cancel Period</b>	<b>Reference No.</b>
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You have the right to ask for works to start before the end of the cooling off period. By exercising these rights, in writing, and delivering this detachable portion to us, you are agreeing to pay any reasonable and proportionate sum for the service or goods supplied up to the point of cancellation. Ensure you quote the estimate or quotation reference number.

***I/We hereby give notice that I/We wish to commence our contract with you for the provision of ..... goods / services.***

**Signed:** - - - - -

**Name:** - - - - -

**Address:** - - - - -

**NOTE: THIS DOES NOT AFFECT YOUR RIGHT TO CANCEL THIS CONTRACT WITHIN 14 DAYS, IF YOU SO CHOSE.**

**In the Event Of A Dispute**

Should any dispute arise with regard to any aspect of this contract, or the work in question, then the dispute shall initially be resolved by the Contractor’s internal complaints procedure, failing that, either the ECA’s Conciliation Service or NICEIC resolution process or Mediation as envisaged by the Alternative Dispute Resolution Regulations 2015. The Final determination shall be the Courts of England and Wales.