

STANDARD TERMS & CONDITIONS for Construction, Engineering & Electrical Works

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1. DEFINITIONS

In these Conditions:

"Contractor"	means [RA Electrical (Pty) Ltd];
"Contract Price"	means the price payable by the Client to the Contractor for the Works, as varied in accordance with these conditions;
"Client"	means the person named as such in the Quotation;
"Quotation"	means the Contractor's signed Quotation referring to the Client's 'Scope of Work';
"Works"	means the Works as described in the Quotation.

2. CONTRACT FORMATION

Acceptance of the Contractor's Quotation by the Client constitutes a Contract for the Contractor to carry out the Works in accordance with these Conditions and all terms and conditions inconsistent with these Conditions are excluded.

3. GENERAL OBLIGATIONS

- 3.1. The Contractor will exercise reasonable skill and care in the performance of the Works.
- 3.2. The Client will give the Contractor access to its premises (and where required mains water and electricity) as reasonably required by the Contractor to enable it to carry out and complete the Works without interference by the Client or by other contractors of the Client.
- 3.3. The Contractor will take every reasonable precaution to minimize damage to the ground whilst working with vehicles and plant machinery. The Client must accept that if there is minor damage under these circumstances that it is not the responsibility of the Contractor to finance the repairs.

4. VARIATION

- 4.1. If the Client wishes to vary any of the Works it will inform the Contractor who will, as soon as practicable, notify the Client of the estimated cost of the variation and the effect on the Contract period.
- 4.2. Unless the Client withdraws his request for a variation when he receives the Contractor's estimate, the Contract Price will be adjusted in accordance with the Contractor's estimate (or as otherwise agreed between the Client and the Contractor) and an appropriate extension of time for completion of the Works shall be agreed.

- 4.3. If a variation is made orally, either the Contractor or the Client will confirm it in writing within 3 working days.
- 4.4. The Contractor will notify the Client if it encounters any difficulties which it could not have reasonably foreseen when submitting the Quotation and in those circumstances, a fair and reasonable adjustment to the Contract Price and/or Contract period will be made.
Unforeseen encounters include the following:
 - a. Changing weather conditions preventing or restricting working hours.
 - b. Damage to undetectable underground services if not shown on service maps provided by the Client
 - c. Delays caused by other contractors on the clients premises.
 - d. Delays caused by theft or damage to plant machinery or materials by a third party.
- 4.5. The Contractor reserves the right not to comply with any requests for a variation which would increase the value of the Works by more than 25% of the original Contract Price.
- 4.6. The Quotation is based on the Clients' Scope of Work and/or Drawings but can change if the Contractor finds fault(s) on the Scope of Work and/or Drawings.

5. CONTRACT PRICE & PAYMENT

- 5.1. The Contract Price is stated in the Quotation and it may be varied in accordance with these Conditions.
- 5.2. The Client shall pay the Contractor the Contract Price in accordance with the payment terms stipulated in the Quotation (7 Days / 30 Days).
- 5.3. Late payment entitles the Contractor to interest at [6% above the Base Rate of Standard Bank Pty LTD] from the due date per payment terms up until the date of actual payment.
- 5.4. Materials and Equipment shall be handled in the following ways:
 - 5.4.1. Materials and Equipment remain the property of RA Electrical until full and final payment of all outstanding invoices is made.
 - 5.4.2. RA Electrical reserves the right to remove such equipment and any costs and or expenses relating there to, will be for the client's account.
 - 5.4.3. The client hereby irrevocably exempt RA Electrical from any damages relating or cost caused by or relating from removing the material/equipment as mentioned in paragraph 5.4.1 and 5.4.2 above.

6. INSURANCE

- 6.1. The Contractor shall take out and maintain the following insurances (except as otherwise agreed or stated in the Quotation):
 - Construction All Risks insurance for the full reinstatement value of the Works in the joint names of the Client and the Contractor (unless the Works are in an existing building, when 6.3 will apply)
 - Public Liability Insurance for [R20 million].
- 6.2. The Contractor will provide the Client upon request during the Contract period evidence that the insurances are in place.
- 6.3. Where the Works are to be carried out in an existing building, the Client will be responsible for insurance of the Works with the Contractor named as co-insured.

7. HANDOVER & DEFECTS LIABILITY

- 7.1. The Contractor will give the Client notice of its intention to hand over the Works and give the Client the opportunity to inspect the Works prior to handover. The Contractor will confirm the date of handover to the Client.
- 7.2. The Contractor will be responsible for remedying defects in the Works which appear within 12 months from the date of handover and which are promptly notified to the Contractor by the Client who will give the Contractor full access to carry out any remedial works and arrange for permits to carry out the works.
- 7.3. The Contractor will have no liability to the Client, in contract or in tort, for any indirect or consequential loss incurred by the Client, including but not limited to loss of use or loss of profit. The sole responsibility of the Contractor will be to remedy defects for which it is responsible and which are notified to it during the 12 months defects liability period.

8. TERMINATION

- 8.1. The Contractor may give notice to terminate the Contract if the Client fails to make any payment becoming due within 7 days of the due date or commits any other material breach of the Contract.
- 8.2. The Client may give notice to terminate the Contract if the Contractor commits a material breach and, in the case of a breach capable of remedy, fails to take steps to remedy the breach within 28 days of being requested to do so in writing.
- 8.3. Either party may terminate the Contract if the other party becomes insolvent or has a receiver, manager or administrative receiver or liquidator appointed.
- 8.4. Termination will not affect the accrued rights and liabilities of the parties at the termination date.

9. GENERAL

9.1. Notices

All notices shall be in writing and effective when delivered to the address for service of the recipient as shown on the Quotation, or to another address of which notice has been given under this clause. Notices sent by post shall be treated as delivered 2 working days after posting.

9.2. Assignment

Neither party will assign any of its rights or obligations under the Contract without the prior written consent of the other.

9.3. Disputes

Every dispute shall be finally determined by the courts of [South Africa].

9.4. Governing Law

The Contract shall be governed by the laws of [South Africa].

9.5. Entire Agreement

The Quotation and these Conditions constitute the only agreement between the parties and supersede any previous arrangements, agreements or understandings relating to the Works.

EXPLANATORY NOTES

Designed from the Contractor's point of view, these standard terms and conditions are intended as a template for any contractor who is engaged in the business of providing construction or engineering works, especially when the works are to be carried out on premises of the Client.

These terms and conditions are intended to be used with a quotation submitted by the Contractor to a Client and this is clear from the text.

Turning to the specific clauses:

1. DEFINITIONS

As indicated above, this refers to the Contractor's quotation and contains some other relevant definitions.

2. CONTRACT FORMATION

This is intended to make it clear that the Contractor's terms and conditions override those of the Client. In practice, this can be more difficult than it appears and legal advice should be obtained.

3. GENERAL OBLIGATIONS

Basic obligations on the part of the Contractor to exercise reasonable skills and care with an obligation from the Client to provide access to premises.

4. VARIATION

This is designed to ensure that if a Client asks for a change, the Contractor will be paid for it at an appropriate rate. Also, a variation can result in a change to the contract period and this is covered by 4.2.

In 4.4 the Contractor should be protected if unforeseen problems arise and in 4.5 the Contractor reserves the right not to undertake changes if these exceed a specified value of the Contract price.

5. CONTRACT PRICE & PAYMENT

This refers back to the quotation to a large extent but in 5.3 there is a provision for the Contractor to receive interest on late payment and the Contractor as full control over his/her material and/or equipment in 5.4.

6. INSURANCE

This will need to be tailored to the particular circumstances but, except where works are carried out in an existing building, see 6.3 - the Contractor has primary responsibility for works insurance and public liability insurance.

7. HANDOVER & DEFECTS LIABILITY

In accordance with the usual practice in the South Africa, the Contractor has responsibility for remedying defects for 12 months following completion and, under 7.1, the Contractor (in effect) fixes the date for handover of the works.

Under 7.3, it is made clear that the Contractor's liability is limited to remedying defects during the 12 months defects liability period. Legal advice is recommended here as there may be overriding legislation which makes the Contractor liable for more than 12 months following handover.

8. TERMINATION

This gives each party the right to terminate the contract if the other party commits a material breach, and either party can terminate if the other becomes bankrupt.

9. GENERAL

This contains a number of provisions concerning notices, assignment, disputes etc.