

TERMS AND CONDITIONS

1. Interpretation and Construction

- 1.1 These terms and conditions must be read in conjunction with the accompanying letter containing the Contractor's quotation and any schedules or attachments thereto. If there is any conflict between the accompanying letter and any schedules or attachments thereto and these terms and conditions, then the letter and its schedules and attachments shall prevail. If there is any conflict between the letter and its schedules or attachments, then the letter shall prevail.

In the Contract, except where the context otherwise requires:

'Client'	Means the addressee named on the letter accompanying these Terms and Conditions;
'Contractor'	Means Power Down Under Pty Ltd [ABN 39 100 891 094] including any of its officers, employees, agents, contractors or representatives.
'Contract'	means the agreement between the Contractor and the Client comprising these Terms and Conditions, the letter accompanying these Terms and Conditions and any schedules or attachments thereto;
'Contract Price'	Means the amount payable by the Client to the Contractor pursuant to the Contract;
'Labour Hire'	Means work done under an hourly schedule of rates for various Clients;
'Scope of Works'	Means the Works described in the letter accompanying these Terms and Conditions;
'Site'	Means the lands and other places to be made available and any other lands and places which may be made available to the Contractor by the Client for purposes of the Contract;
'Variation'	Means any change to the form, quality and extent of the Works;
'Works'	Means the whole or any part of the work to be executed by The Contractor in accordance with the Contract, including any Variations;

Words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. The law governing the Contract is the law of the State of Western Australia.

1.2 Headings

Except in the attachments, accompanying letter and schedules, headings in this Deed are for convenience and identification of clauses only and do not otherwise affect its interpretation.

1.3 References to a Party

Unless contrary to the sense or context, a reference to a Party includes that Party's executors, administrators, personal representatives, successors, assigns, and current and previous employees, officers, directors, servants and agents.

2. The Contract

- 2.1 Upon acceptance of this quotation, a binding contract ("the contract") shall be created between the Contractor and the Client solely on these terms contained herein, including the terms contained in the Contractor's quotation, accompanying letter and quotation.
- 2.2 The Client has represented ability and capacity to pay for the Works to be completed and must provide a suitable guarantee for payment if requested by the Contractor.
- 2.3 No change in the terms of the contract shall be effective unless agreed in writing by the Contractor. The waiver by the Contractor 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.

3. Performance and Payment

- 3.1 The Contractor shall execute and complete the Work specified in the Scope of Works.
- 3.2 Any performance figures provided by the Contractor are based on the Contractor's experience and are such as the Contractor could expect to obtain on test. The Contractor shall be under no liability or damages should reports, information, documentation and or any other goods supplied by it fail to attain such performance figures unless the Contractor has specifically guaranteed in writing the attainment of such performance figures.
- 3.3 The Client shall pay the Contractor:
- For Work which the Contractor has accepted a lump sum, the lump sum, including monthly progress payments for all materials, labour and contract work delivered during the current month of invoice based on a percentage estimate made at the sole discretion of the Contractor, and;
 - For Work which the Contractor has accepted rates, the sum ascertained by multiplying the measured quantity of each section or item of Work actually carried out under the Contract by the rate accepted by the Client for the section or item, and;
- 3.4 The Client shall pay 10% of the contract price, on lodgement with the Contractor of the Client's order, adjusted by any additions or deductions made pursuant to the Contract. The Client is not entitled to make any deduction or withhold any payment from the contract price in respect to any set-off or counter claim.
- 3.5 The Contractor will issue an invoice for any amounts payable pursuant to this Contract and the Client must pay any invoice received from the Contractor within 30 days of invoice date.
- 3.6 Except as otherwise provided elsewhere in the contract any increase in the cost to the Contractor for the provision of goods or services as a result of a variation in exchange rates or exchange in law shall be borne by the Client and the contract price shall be adjusted accordingly. In these conditions "change in law" means when any legislation, regulation, by-law, ordinance, standard, award or other comes into effect or is changed by not limited to any new tax, duty or other impost or change in the rate of any tax duty or impost.
- 3.7 Where moneys are due but unpaid to the Contractor under the Contract then the Client shall pay to the Contractor an amount equal to 2% above the daily overdraft rate charged or chargeable by the principal Australian Bankers of the Contractor to the Contractor at any time and from time to time for an overdraft of \$100,000.00, such amount being payable on demand and accrued daily.
- 3.8 All prices quoted by the Contractor are exclusive of sales tax. Unless the Client produces to the Contractor a certificate of sales tax exemption obtained from the Australia Tax Office, the Client must pay all sales tax incurred by the Contractor in performing the Work.
- 3.9 Unless stated otherwise packing and packing disposal is not included in the contract price.

4. Cost Adjustment

- 4.1 If the Works are completed within 12 months after acceptance of this quotation, then no cost adjustment shall apply. But if the Works are not completed within that period, then each claim for payment submitted thereafter 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. Extension of Time

- 5.1 If the Contractor is delayed in the execution of the Works due to any cause beyond his control (including, but not limited to, variations, acts of God, strikes, lockouts or other industrial disturbances, fire, flood, explosion and laws, rules, regulations or orders of any Government authority or delays caused by any other person, company or authority), the Contractor shall be entitled to a reasonable extension of time to complete the Works while such cause exists and the provisions of Clause 4 shall apply.
- 5.2 If any such cause continues for six months or more, either party may by notice in writing to the other terminate the contract. The termination of the contract shall not affect the rights and obligations of either party which accrued prior to such termination.

6. Materials, Details and Dimensions

- 6.1 The Client before accepting this quotation acknowledges that adequate care has been taken to ensure that the materials and articles specified are of the correct type, size, rating, standard, quality, colour, finish and express the full requirements and conform to the specification and drawings against which the quotation was submitted.
- 6.2 The Client warrants, in respect of plant equipment and fittings supplied and to which the Contractor is required to connect its works, will conform to relevant Australian Standards and to local statutory requirements.
- 6.3 The Client shall provide the Contractor with all necessary dimensions and locations in adequate time to enable the Contractor to carry out and complete the Works in accordance with the contract.

7. Asbestos and Other Toxic Substances

- 7.1 This contract is conditional upon the site of the Works being free from asbestos and other toxic substances and should asbestos or other toxic substances be discovered then the Client shall accept full responsibility for the resolution of any problems arising and shall add to the contract sum an amount equal to any costs necessarily incurred by the Contractor as a consequence of such problems.

8. Safety

- 8.1 The Client shall ensure that whilst ever the Contractor is required to work on the site of the Works such site is maintained as a place of work which complies with the WA Occupational Health and Safety Act and should the Client fail to so ensure and thereby cause the Contractor to incur costs, then such costs shall be added to the contract sum.

9. Finished Surfaces

- 9.1 Unless agreed otherwise, the Client shall make good all finished surfaces, including but not limited to ceiling tiles and panels, face brickwork and rendered masonry surfaces, which the Contractor may reasonably have to break into or disturb in performance of the Works.

10. Variations

- 10.1 If the Client requests any variation in the Works during the contract, including but not limited to any variation in materials or dimensions, or variations arising from inaccuracies in Bills of Quantities or other documents supplied to the Contractor for quotation purposes, the Contractor 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 complete the Works, as varied.
- 10.2 If the cost to the Contractor of carrying out, or having carried out, the Works increases or decreases because of changes in statutory, government or semi-government charges, taxes, rates, levies or imposts with respect to the Contractor or the Works or changes in currency exchanges rates, the contract sum shall be increased or decreased to the extent of such changed costs.
- 10.3 If the Client's employees or any other employees employed on the site of the Works receive any allowance in excess of those provided in relevant awards, including but not limited to site allowance and severance pay and the Contractor is obliged to make a similar allowance to their employees or subcontractors, the cost of such allowance together with all statutory charges which it attracts, plus a 20% administration fee, shall be added to the contract sum.
- 10.4 Where extra cost in materials, labour and overhead is occasioned to the contractor by virtue of acceleration of the agreed work schedule or of the presence of obstructions or conditions which could not reasonably have been anticipated by the Contractor, it shall be added to the contract sum.
- 10.5 The Client agrees that it will respond to the Contractor's claim for variations reasonably and promptly and that should it fail to accept any claim for a variation from the Contractor within ten (10) working days of receiving it or fail within the same period to give to the Contractor in writing a reasonable explanation for not accepting such claim, then the amount of such claim shall be added to the contract sum.

11. Working Hours

- 11.1 The contract is based on the Contractor performing the Works at ordinary time rates of pay for labour and on thirty eight (38) hour working weeks and should the Client require the Contractor to work at times which will oblige the Contractor to pay labour at rates in excess of ordinary time rates of pay, then the cost of such statutory changes, shall be added to the contract sum.

12. Inclement Weather

- 12.1 The contract is based on all employees of the Contractor who work on the site of the Works under the Electrical, Electronic and Communications Contracting Industry Award, or any other applicable award from time to time, being able to work a full 38 hours per week under the terms of such Award, irrespective of weather conditions, and should such employees be unable to work a full 38 hours per week due solely to the advent of inclement weather, then the cost to the Contractor of employing such employees whilst they are unable to work, due solely to the advent of inclement weather, shall be added to the contract sum.

13. Supply Authority and Statutory Authority Charges

- 13.1 Unless declared elsewhere as having been provided for, then the cost to the Contractor of charges in connection with the Works, which are levied by any relevant network operator; network regulator; other statutory authorities or relevant authorities, shall be added to the contract sum.

14. Retention of Title

- 14.1 Until the contractor receives payment in full and property in the works or a section of the works passes to the client, the client shall

hold the works or the unpaid section as bailee for the contractor.

- 14.2 If the contractor determines that this contract (or a transaction in connection with it) is or contains a security interest for the purposes of the Personal Properties Securities Act 2012 (PPSA), the client agrees to do anything (including obtaining consents, signing and supplying information) which the contractor asks and considers necessary for the purposes of:
- 14.3 Ensuring that the security interest is enforceable, perfected and otherwise effective; and/or
- 14.4 Enabling the contractor to apply for any registration, complete any financial statement or give any notification in connection with the security interest; and/or
- 14.5 Enabling the contractor to exercise its rights in connection with the security interest.
- 14.6 The contractor may, in its absolute discretion, register any security interest as defined in the PPSA in the register operated in accordance with the PPSA.
- 14.7 delays caused by any other person, company or authority), the Contractor shall be entitled to a reasonable extension of time to complete the Works while such cause exists and the provisions of Clause 4 shall apply.
- 14.8 If any such cause continues for six months or more, either party may by notice in writing to the other terminate the contract. The termination of the contract shall not affect the rights and obligations of either party which accrued prior to such termination.

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- 15.1 The Client before accepting this quotation acknowledges that adequate care has been taken to ensure that the materials and articles specified are of the correct type, size, rating, standard, quality, colour, finish and express the full requirements and conform to the specification and drawings against which the quotation was submitted.
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- 19.3 If the Client's employees or any other employees employed on the site of the Works receive any allowance in excess of those provided in relevant awards, including but not limited to site allowance and severance pay and the Contractor is obliged to make a similar allowance to their employees or subcontractors, the cost of such allowance together with all statutory charges which it attracts, plus a 20% administration fee, shall be added to the contract sum.
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- 23.1 Until the contractor receives payment in full and property in the works or a section of the works passes to the client, the client shall hold the works or the unpaid section as bailee for the contractor.
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- 23.3 Ensuring that the security interest is enforceable, perfected and otherwise effective; and/or
- 23.4 Enabling the contractor to apply for any registration, complete any financial statement or give any notification in connection with the security interest; and/or
- 23.5 Enabling the contractor to exercise its rights in connection with the security interest.
- 23.6 The contractor may, in its absolute discretion, register any security interest as defined in the PPSA in the register operated in accordance with the PPSA.
- 23.7 The contractor need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given.

24. Plant and Materials

- 24.1 If the Contractor notifies the Client that it intends to store on the site materials and articles to be used in the Works or constructional plant, equipment or tools to be used in performance of the Works, the Client shall designate an area for storage and shall take all reasonable precautions to protect any such materials, articles, constructional plant, equipment or tools stored on site from destruction, damage or theft. If they are destroyed, damaged or stolen, the cost of replacement shall be added to the contract sum.

25. The Site and On-Site service

- 25.1 Where the Contractor requires access to the Client's premises to perform its obligations under the Contract, then the Client shall give reasonable and safe access to the Site. If reasonable and safe access to the Site is not provided, the Contractor may elect to terminate the Contract.
- 25.2 If the conditions at the Site differ from what the Contractor ought to have reasonably anticipated, the parties are to agree the reasonable costs incurred by the Contractor because of the different conditions.
- 25.3 Any on-site services that are reasonably required by the Contractor for execution of the Works shall be provided by the Client at no expense to the Contractor.
- 25.4 On-site services provided by the Client shall comply with all statutes regulations and by-laws.

26. Cleaning

- 26.1 The Contractor shall leave the Works cleaned by removing any dirt and marks attributable to its activities.
- 26.2 Rubbish generated by the Contractor shall be deposited in one area only per floor as designated by the Client and shall be removed at no cost to the Contractor.

27. Commissioning

- 27.1 Unless otherwise agreed in writing, the Contractor's responsibilities in respect of commissioning the Works shall be limited to proving conformance of the Works with any specification supplied by the Client.

28. Claims Against the Contractor

- 28.1 Any claim which the Client may have against the Contractor 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.
- 28.2 The Contractor shall not be liable for any damage to materials or the Works caused by the Client or third parties.
- 28.3 Unless otherwise agreed in writing, the Contractor shall not be liable to pay pre-ascertained or liquidated damages.
- 28.4 The Contractor will not accept the return of, or give credit for, any goods supplied in accordance with the contract.
- 28.5 The Contractor 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.

29. Warranties

- 29.1 The Contractor warrants that all materials and workmanship comprising the Works shall conform with the current edition of the AS/NZS 3000 Wiring Rules and the requirements of any authority regulating the supply and use of electricity or electrical installations in force on the date of the performance of the Works.
- 29.2 The Contractor will rectify any defects in materials or workmanship of the Contractor appearing in any section of the Works within six months of the date of handover of that section.
- 29.3 Where any warranty has been given by a third party in respect of materials and workmanship supplied by that third party to the Contractor and incorporated in the Works, and such warranty imposes less obligations on the third party than those imposed on the Contractor by Clause 20.2 the Contractor shall give a like warranty to the Client, which shall apply to such materials or workmanship to the exclusion of Clause 20.2
- 29.4 Any defects appearing in the Works, caused by the use by the Client or any third party of faulty materials or workmanship, or attributable to the activities of other trades, structural loads, vandalism or maltreatment, are excluded from the provisions of Clause 20.2
- 29.5 Where the Client intends to take recourse against any retention monies or bank guarantees, the Client may only take those actions following the expiry of 30 days from the formal serving of a notice of intent.

30. Limitation of Liability

- 30.1 The Contractor 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 the Contractor's failure to perform any obligation under the contract.
- 30.2 Notwithstanding anything to the contrary, in no circumstances whatsoever shall the Contractor 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.

31. Insurance

- 31.1 Workers' Compensation and Public Liability insurance shall be affected by the Contractor in relation to and during the currency of the Works. Such insurance shall cover the Contractor's interest only.
- 31.2 The client shall insure the Works in the joint names of the Client and the Contractor and shall maintain such insurance until completion of the Works.

32. Termination

- 32.1 Either party shall be entitled to terminate this Contract by notice in writing to the other party given upon the occurrence of any of the following events:
 - i. If the other party shall fail to remedy any breach by it of this Contract within 14 days of receipt of written notice delivered by hand or sent by certified mail to the other party from the party giving notice requiring the other party to remedy such breach; or
 - ii. If an official manager, controller, administrator or liquidator (provisional or otherwise) is appointed in respect of the whole or any part of the assets and undertakings of the other party; or
 - iii. If the other party enters into an arrangement or compromise with, or assignment for the benefit of, all or any class of its creditors.
- 32.2 If the Contract is terminated, the Client shall pay the Contractor:
 - i. The amount certified by the contractor as payable for Work completed prior to the date of termination;
 - ii. The cost of materials reasonably ordered by the Contractor for the Work under the Contract which the Contractor is liable to accept; and
 - iii. The costs reasonably incurred by the Contractor in the expectation of completing the whole of the Work under the Contract.

33. Cancellation

- 33.1 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 the Contractor compensation for all losses (including consequential losses, lost profits and the loss of prospective profits) suffered by it as a result of such cancellation.

34. Confidentiality

- 34.1 The Client shall keep secret and confidential and shall not disclose to any third party without the prior written consent of the Contractor any information, data, specification, drawings, reports, accounts or other documents and things supplied or made available by the Contractor to the Client or brought into existence by the Contractor for the purpose of performance of the Works set out herein 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.

35. Assignment and Subletting

- 35.1 Neither party shall assign the contract in whole or in part without the prior written approval of the other party, but the Contractor shall be entitled to subcontract the contract wholly or in part.

36. Implied Terms

- 36.1 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 goods and services to be supplied by the Contractor, the exclusion, restriction or modification of which would pursuant to any statute, including the Competition and Consumer Act 2010, render this clause or anything contained here void or illegal.

37. Dispute Resolution

- 37.1 If a dispute between the Contractor and the Client arises out of or in connection with the Contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute.
- 37.2 Within 14 days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute.
- 37.3 In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and be conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

38. Severance

- 38.1 If any part of this Deed is, or becomes, void or unenforceable, that part is, or will be, severed from this Deed so that all parts that are not, or do not become void or unenforceable remain in full force and are unaffected by that severance.

39. Proper Law

- 39.1 This Deed is governed by and to be interpreted in accordance with the laws of Western Australia and, where applicable, the laws of the Commonwealth of Australia.