

## KTY ELECTRICAL SERVICES TERMS & CONDITIONS

***NOTE: The Australian Consumer Law and other legislation have provisions that may not be contracted out of. Where those mandatory provisions apply, they override provisions to the contrary in these terms and conditions.***

### 1. INTERPRETATION

- a. 'Customer' refers to the person(s)/company(ies) named in the quote;
- b. 'Quoted Works' means all works, equipment and goods stated in the description of quote;
- c. 'Additional or Variation Works' means all works, equipment and goods undertaken by KTY Electrical Services at the Customers instruction, that are a variation to or are additional to, the Quoted Works.
- d. 'the Works' means Quoted Works and Additional or Variation Works.
- e. 'KTY Electrical Services' means Tarr Holdings Pty Ltd trading as KTY Electrical Services (ACN 134 416 238);
- f. 'person' includes a firm, a body corporate, an unincorporated association or an authority;
- g. 'ACL' means the Australian Consumer Law pursuant to schedule 2 of the *Competition and Consumer Act 2010*.
- h. a reference to a group of persons includes a reference to all of them collectively, any two or more collectively and each of them individually;
- i. a reference to a party includes a reference to the party's successors and permitted assigns and any person claiming under or through the party;
- j. every agreement or obligation expressed or implied in this Agreement by which two or more persons agree or are bound shall bind such persons jointly and each of them severally;
- k. the singular includes the plural and vice versa;
- l. other grammatical forms of defined words or expressions have corresponding meanings;
- m. 'Default Rate' means 14% per annum;
- n. 'Agreement' means these terms and conditions.

### 2. TERMS OF PAYMENT

- a. Charges are due and payable by the Customer to KTY Electrical Services in accordance with the schedule of payments contained in the quote.
- b. If the quote does not contain a schedule of payments, charges are due and payable by the Customer to KTY Electrical Services within 7 days of completion of the Works.
- c. If the Customer withholds payment of any charges that are due and payable to KTY Electrical Services, the Customer must notify KTY Electrical Services in writing within 24 hours, the reason why payment is being withheld. KTY Electrical Services' otherwise reserves its rights, including those under Clause 8 of this Agreement.
- d. This clause is an essential term of the Agreement.
- e. If payment is not received in accordance with this clause, KTY Electrical Services reserves the right to suspend the Works and shall not be liable for any delay to the completion of the Works or consequential delay to the completion of any project/build associated with the Works.

### 3. CUSTOMER'S WAIVER

To the greatest extent permitted under law the Customer cannot recover from KTY Electrical Services compensation

for any damages (including for consequential loss) arising in respect of this Agreement or the quote. NB This clause does not affect any rights the Customer may have under the ACL, to the extent that those rights may not be lawfully excluded or modified under this Agreement.

### 4. WARRANTIES

- a. KTY Electrical Services provides a 12 month warranty on the Works and any goods supplied to the Customer.
- b. The Customer shall provide KTY Electrical Services a reasonable opportunity to undertake any rectification works under this warranty within a reasonable period of time, before any rectification works are undertaken by a third party.
- c. The warranty shall not cover any damage to the Works that is a result of:
  - i) neglect or misuse of the Works by anyone other than KTY Electrical Services, its staff, employees, agents or subcontractors;
  - ii) rodents or other pests; and
  - iii) water or dust.

NB This clause does not affect any rights the Customer may have under the ACL or other law if, and to the extent that, those rights may not be lawfully excluded or modified under this Agreement.

### 5. FORCE MAJEURE

If KTY Electrical Services is unable to perform in whole or in part its obligations under this Agreement by reason of KTY Electrical Services awaiting other trades or works to complete their works on the project or site that the Works are to be completed, changes or variations to the Works after those works have commenced, war, riots, terrorism, civil commotion, labour disputes, strikes, airport closure (in whole or in part), lockouts, inability to obtain labour or material, fire or other acts of elements (earth, water or air), accidents, government restrictions or appropriation, financial or economic catastrophe or other causes whether like or unlike the foregoing beyond its control so as to cause an adverse effect on its liability to perform its obligations then KTY Electrical Services shall be relieved of those obligations to the extent that it is unable to perform and for as long as it is unable to perform and no liability shall arise from the said non-performance. NB This clause does not affect any rights the Customer may have under the ACL, to the extent that those rights may not be lawfully excluded or modified under this Agreement.

### 6. CUSTOMERS' OBLIGATIONS AND WARRANTIES

The Customer shall:

- a. comply with any requirements specified in the quote and this Agreement;
- b. agree that KTY Electrical Services may engage qualified subcontractors to undertake the Works;
- c. within 48 days of making a payment in accordance with this Agreement, provide to KTY Electrical Services a receipt of that payment;
- d. not unreasonably refuse KTY Electrical Services, its employees, agents or subcontractors, access to the site or location in which the Works are to be completed;
- e. provide KTY Electrical Services written confirmation of any Additional or Variation Works before KTY Electrical Services shall commence those works;
- f. pay to KTY Electrical Services for any Additional or Variation Works undertaken by KTY Electrical Services in

accordance with any quote provided by KTY Electrical Services for the Additional or Variation Works and if no quote is provided, a reasonable amount in the circumstances;

- g. pay all Additional or Variation Works in accordance with this Agreement;
- h. not withhold payment of Quoted Works on the basis that KTY Electrical Services have not completed Variation or Additional Works; and
- i. be responsible to pay for any costs of federal, state or local government building fees, application costs and related costs of a like nature.

## **7. INDEMNITIES**

a. In this clause the following definitions shall apply:

- (i) 'Claim' means any claim, action, proceedings, demands, cost damage, loss, expense, liability or other outgoing howsoever incurred or suffered by, or brought or made or recovered howsoever arising (whether or not presently ascertained, immediate, future or contingent);
- ii) 'Company' means Tarr Holdings Pty Ltd and its related Bodies Corporate (as that term is defined in the *Corporations Act 2001*);
- iii) 'Personnel' means any and all personnel engaged by the Customer, including its Directors, officers, employees, agents, consultants, invitees, sub-contractors and any Director, officer, employee, agent, consultant or invitee or any sub-contractors;

b. Where any negligent act, error or omission of the Customer or its Personnel causes any liability, loss, damage, claim, suit, action, demand, expense or proceeding of whatever nature whether arising under statute or at common law in respect of:

- i) personal injury (which expression shall include illness, disability or death), or any persons whomsoever; or
- ii) loss or destruction of or damage to or loss of use of any property real or personal;

to KTY Electrical Services, its Directors, officers or employees, the Customer, to the greatest extent permitted under law, shall be liable for and shall indemnify and keep indemnified KTY Electrical Services, its Directors, officers and employees against the aforementioned liability, damage, claim, suit, action, demand, expense or proceedings. NB This clause does not affect any rights the Customer may have under the ACL, to the extent that those rights may not be lawfully excluded or modified under this Agreement.

## **8. EARLY TERMINATION OF AGREEMENT**

If the Customer commits any breach of this Agreement, or permits to be done any act or thing whereby either party's rights in or to this Agreement may be prejudiced, or has a winding up petition presented against it or be wound up, or go into voluntary liquidation or commit an act of bankruptcy or if a receiver of their assets or any of them is appointed or it makes an assignment or compromise for the benefit of its creditors or if its business is placed under official management or if it ceases to carry on business, the Customer shall pay to KTY Electrical Services the value of the Works that have been completed by KTY Electrical Services and other costs payable pursuant to this Agreement.

## **9. INTEREST**

If the Customer is in default in the payment of any money under this Agreement interest will be payable by the

Customer to KTY Electrical Services on the amount owing and unpaid from time to time at the Default Rate as from and including the due date for payment until it has been repaid.

## **10. COSTS**

In consideration of KTY Electrical Services entering into this Agreement, the Customer, to the greatest extent permitted under law, agrees to indemnify KTY Electrical Services from and against all losses damages costs and expenses which KTY Electrical Services may suffer as a result of KTY Electrical Services entering into this agreement or any other agreement with the Customer including but without limitation all costs (including legal costs on an indemnity basis) incurred by KTY Electrical Services as a result of or arising out of enforcing its rights under this agreement, any other agreement with the Customer or any other security held by KTY Electrical Services in respect of the obligations of the Customer hereunder or in any way incidental to this agreement or any other agreement with the Customer or any other such security or in defending any action, claim or demand made against it by the Customer. NB This clause does not affect any rights the Customer may have under the ACL, to the extent that those rights may not be lawfully excluded or modified under this Agreement.

## **11. CHARGE**

- a. The Customer hereby charges their respective right, title and interest as beneficial owner and as trustee of every trust in all real estate which they or any of them now have or at any time hereafter may have to secure their obligations under this Agreement or any other agreement with KTY Electrical Services.
- b. If KTY Electrical Services lodges a caveat over all or any of the said real estate it is under no obligation to withdraw that caveat but must execute a withdrawal of that caveat presented to it by the Customer for that purpose once the Customer has satisfied all of its obligations under this Agreement and every other agreement with KTY Electrical Services.

## **12. MISCELLANEOUS**

- a. The person who accepts the quote and the Agreement for and on behalf of the Customer hereby covenants with KTY Electrical Services that he or she has the authority of the Customer to make this Agreement on the Customer's behalf and is empowered by the Customer to bind the Customer to this Agreement and hereby indemnifies KTY Electrical Services against all losses and costs incurred by KTY Electrical Services arising out of the person accepting the quote and the Agreement not in fact having such power and/or authority.
- b. Termination of the agreement between the parties shall not affect any of the conditions that are expressed or implied to operate to have effect after termination.
- c. If any provision of this Agreement which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.
- d. This Agreement is governed by the laws of Western Australia. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.