



Terms of Agreement

Any goods, parts, materials, and ancillary utilities ("Goods") and labour services for installation and fitting or project management charged on a fixed cost or hourly basis ("Services") supplied by activ8 group limited ("the Contractor") are supplied to the PERSON, PARTNERSHIP OR COMPANY ("the Customer") for sale as on the following terms and conditions and as a construction contract on the following terms and conditions:

1. Terms of Contract between Company and Customer

1.1 These Terms of Contract between the Contractor and the Customer signing this Agreement and any quotation or tender from the Contractor for the supply of Goods and Services shall take precedence over any terms or oral or written notice from the Customer and in the case of any conflict or dispute, these terms shall prevail.

1.2 The Contractor and the Customer shall acknowledge that these terms of contract constitute a Security Agreement as defined by the Personal Property Securities Act 1999 ("PPSA"). This enables the Contractor to register the debt owed by the Customer until it is paid in full. For the purposes of the PPSA, Collateral shall include all Goods and Services and the proceeds thereof. The Customer shall agree not to allow any person to file a finance statement over any of the Collateral secured by this Security Agreement without the prior written consent of the Contractor.

1.3 This contract will also be applied as a construction contract within the meaning of the Construction Contracts Act 2002 (the "Act") that binds the parties to the terms and conditions of the Act. If the Contractor applies the contract under the Act the parties acknowledge that they cannot contract out of the provisions of the Act.

2. The Contractor will Agree to the following :

- 2.1 To provide a tender or quotation excluding GST that will expire after 30 days for the price and description of the job. The Contractor may withdraw any quotation within 30 days of notification before acceptance by the Customer.
- 2.2 To make every effort to ensure the job is completed on time subject to the availability of the Goods to be used and the readiness of the Customers property site.
- 2.3 To Guarantee to repair or replace any damaged or defective Goods or defect in workmanship provided that the Customer notifies the Contractor within 20 days from the completion of the tender or quotation or Customer order and provided that the Contractor has reasonable opportunity to investigate the claim and provided that all materials and services have been supplied by the Contractor and not by the Customer or any third party and that the job has not been interfered with in any way by the Customer or a third party.
- 2.4 To apply the warranty of the original manufacturer of the Goods or where this is not available to guarantee the durability of the Goods for a period of (12) months and workmanship Services for a period of (6) six months after the completion of the tender or job subject to the claim conditions.
- 2.5 To provide the Customer with a statement of their rights and obligations with any claim for payment from the Contractor and for adjudication under the Construction Contracts Act (where this may apply) for disputes that may arise.

3. The Parties shall Agree :

- 3.1 That the Contractor is not liable for any claim by the Customer for any economic or consequential loss that may be incurred by the Customer where it may think that they are prejudiced by damaged or defective Goods or Services (parts, materials or workmanship) and that claims will be limited to repair or replacement of the Goods and Services or the price of the Goods or Services, and only within the scope of the job provided and the guarantee will not apply where:
- (a) the damage or failure is due to damage, misuse or negligent care while in the possession of the Customer or Customer failure to follow written care instructions;
 - (b) the damage or failure is entirely due to instructions from the Customer regarding the materials or application of materials that are required for the job.
 - (c) the failure is due to the Customer not complying with legislation or Local Council laws for the readiness and use of the site.
 - (d) the damage or failure is due to the Customer or a third party attempting to rectify defects or damage.
 - (e) the defect or failure is due to earthquake, bad weather and other environmental or other force majeure events outside of the control of the Contractor.
 - (f) the Contractor is not liable for damages or loss suffered by the Customer by the Customer's own actions.
 - (g) the Customer has requested or agreed to the Contractor undertaking actions outside of the Contractors field of expertise ie. Building, Waterproofing or Structural works etc.

4. The Customer will agree to the following:

4.1 Delivery of Goods and Services

- (a) Where the Contractor has performed part or all of the supply of Goods or Services at a time agreed by the Customer but where delivery is delayed because of any act, omission or delay by the Customer or where the Customer has not rendered their site safe under environmental or the Health and Safety in Employment Regulations, the Contractor will require the Customer to pay that portion of the contract price which represents the costs incurred by the Contractor in carrying out supply.
- (b) Where the Customer has arranged for the supply of plans, specifications materials, parts or permits by declaration in the quotation or tender it shall be the sole responsibility of the Customer that supply is satisfactory for the purposes they are intended and if the Contractor uses such supply and incurs costs where supply is not fit for purpose or in accordance with electrical or building codes, the Customer shall pay the Contractor for all costs incurred in its supply.
- (c) To pay additional costs if there is any alteration or variation to the job originally agreed by the Customer or if the job is cancelled prior to completion to pay for materials and services supplied to the date of cancellation.

(d) Where a period of over 60 days from the agreement date of the quotation or tender has lapsed, any procurement of materials or product that has been discontinued or increased in price, will be subject to, (i) on charge directly to the customer, and or (ii) Suitable replacement product with the difference in price to be met by the customer.

4.3 Payment

- (a) Payment is to be made by deposit and by progress payments declared in the quotation or tender upon the Contractor submitting a Payments Schedule and Payment Claim in accordance with the Act and final payment is to be made in full without deduction or setoff according to the terms set out in the quotation or tender.
 - (b) If payment is not made in full by the due date the Contractor is entitled to charge the Customer interest on the unpaid overdue balance at the rate of 5% per annum above the current rate charged by the Contractor's bank calculated from the due date of payment down to the actual date of payment, and the Contractor may at its option suspend work upon giving the Purchaser five (5) days notice in accordance with the Act and secure any Goods in its possession regardless of the term of this contract until the overdue amounts are paid in full. The Contractor also has the right to adjudication and the Customer may not engage any other person to complete work under the terms and conditions of the Act.
- 4.4 If settlement of the terms of payment set out in the tender or quotation or by other authorisation is not met by the Customer the Customer agrees to pay interest at the rate of 5% above the Contractor's bank indicator lending rate where payment is made after due date.

5. Application of the PPSA

The Contractor may create and register a Purchase Money Security Interest under the PPSA for any and all Goods and Services remaining unpaid and that the Customer agrees to waive the right to receive a verification statement for purposes of s.148 of the Act. The Customer shall inform any Trustee in Bankruptcy or Liquidator of the Customer or any Receiver of the Customer's property or assets of the rights of the Contractor.

The Security Agreement is a continuing security and will operate irrespective of any intervening payment or settlement of account until a release has been signed by the Contractor. The security interest granted in the Collateral has the same priority in relation to any and all of the Goods and Services supplied to the Customer by the Company at any time.

6. Application of the Construction Contracts Act

6.1 The Customer expressly acknowledges that this is an agreement for construction within the meaning of the Act and acknowledges that:

- (a) In accordance with the Act and by serving notice of suspension the Contractor has the right to suspend work for non-payment of any progress payment and the Customer shall also agree that the Customer may not engage any other person to complete the job. (This is a mandatory requirement of the Act).
- (b) Where non payment is because of a dispute by the Customer and where the dispute is not notified in writing by the Customer within 20 days after the completion of the job such dispute shall heard be in accordance with the adjudication procedures of the Act.
- (c) The outcomes of adjudication shall be agreed as final and legally binding which may include the Contractor requesting the Adjudicator to provide a Charging Order over the property of the Customer.

6.2 The Contractor has the right to suspend work within five working days of written notice of its intent to do so if a payment claim is served on the Customer, AND

- (i) the payment is not made in full by the due date for payment and no payment schedule has been given by the Customer for the reasons for non payment or alternative payment; OR
 - (ii) a scheduled amount stated in a payment claim is not paid in full by the due date for its payment; OR
 - (iii) the Customer has not complied with an Adjudicator's notice that the Customer must pay an amount to the Contractor by a particular date: AND
- (iv) the Contractor has given written notice to the Customer of its intention to suspend the carrying out of installation or project under this construction contract.

6.3 If the Contractor suspends work, it

- (a) is not in breach of this agreement; AND
 - (b) is not liable for any loss or damage whatsoever including economic and consequential loss suffered, or alleged to be suffered by the Customer its employees or agents; AND
- is entitled to an extension of time to complete work under this contract, AND
- (c) keeps its rights under this contract including the right to terminate the contract; and at any time may lift the suspension, even if the amount has not been paid or an Adjudicator's determination has not been complied with.

6.4 If the Contractor exercises its right to suspend work the exercise of the right does not:

- (a) affect any rights that would otherwise have been available to the Contractor under the Contractual Remedies Act 1997; OR
- (b) enable the Customer to exercise any rights that may otherwise have been available under the Act as a direct consequence of the Contractor suspending work under this provision.

7. The Quotation and Tender forms part of this Contract

The Customer agrees that the quotation or tender of the Company forms part of this contract and upon signing acceptance of the tender or quotation also binds the Customer to the contract.