

## 1. Definitions

**Client** means any party engaging, or proposing to engage, the services of J.A. Martin Electrical Pty Ltd, either verbally or in writing, and has the same meaning as buyer, customer, consumer or purchaser.

**Collateral** has the meaning given under the PPSA and in particular for the purposes of this contract, the personal property that is not used predominately for personal, domestic or household purposes as identified in clause 10 hereof to which the Security Interest has attached;

**Energization** means the application or instatement of electrical energy.

**Goods** means tangible goods, tangible items, tangible parts, tangible products or tangible benefits.

**J.A. Martin Electrical** means J.A. Martin Electrical Pty Ltd (ABN 11 146 308 063)

**PPSA** means means the *Personal Property Securities Act 2009* (Cth);

**PPSR** means the personal property securities register established under section 146 of the PPSA;

**Prescribed Terms** means any terms, conditions, guarantees and warranties which the *Competition and Consumer Act 2010* (Cth) and any other law expressly provides may not in respect of the contract between the Client and J.A. Martin Electrical be excluded, restricted or modified, or may be excluded restricted or modified only to a limited extent;

**Services** means design, work, intangible goods, intangible products or intangible benefits.

**Site Of The Works** means a single location or multiple locations relating to the performance of work by J.A. Martin Electrical for the Client or for the delivery of products, materials or goods by J.A. Martin Electrical for the Client, other than the premises of J.A. Martin Electrical.

## 2. Agreement

- a. In engaging J.A. Martin Electrical for the performance of any work, or for the supply of any products, materials or goods, the Client acknowledges acceptance of the associated costs and charges and agrees to make payment for such under the terms for payment set out herein. The Client acknowledges that it has represented an ability to pay for the work to be completed.
- b. Where a written quotation has been provided by J.A. Martin Electrical the terms and conditions detailed herein shall form part of that quotation.
- c. Where a written quotation has been provided by J.A. Martin Electrical, acceptance shall only be by written notice to J.A. Martin Electrical within 30 days of the date of the quotation. Upon such acceptance by the Client a binding contract shall be created between the Client and J.A. Martin Electrical Pty based solely on the terms detailed in the quotation and this document.
  - i. No change in the terms of the contract shall be effective unless agreed in writing by J.A. Martin Electrical.
  - ii. The waiver or breach by J.A. Martin Electrical of any term of the contract shall not constitute a waiver or breach of any other term of the contract.
- d. In the absence of a written agreement between the Client and J.A. Martin Electrical detailing a fixed scope of work and an associated fixed price for the provision of materials, products, goods or services by J.A. Martin Electrical, the cost for such shall be borne by the Client on a do and charge basis.
  - i. The details of do and charge works shall generally be detailed on J.A. Martin Electrical Service Sheet documents. The act of signing such Service Sheet(s) by the Client or an agent of the Client constitutes acceptance by the Client of the associated charges by J.A. Martin Electrical and of all terms and conditions detailed herein.
  - ii. The charges and rates for products, materials, goods and services provided by J.A. Martin Electrical on a do and charge basis may be varied from time-to-time at the discretion of J.A.

Martin Electrical.

- e. These terms and conditions shall without further notice apply to all future transactions between J.A. Martin Electrical and the Client in relation to the sale and purchase of goods and services, whether or not this document is delivered or executed in the course of the transaction.
- f. For the avoidance of doubt, none of the terms and conditions contained in any document or other instrument supplied by or on behalf of the Client (including without limiting the foregoing, those included in any purchase order or like document from the Client) shall apply to or form part of the contract, except and to the extent otherwise agreed in writing by J.A. Martin Electrical.
- g. If any provision of these terms and conditions is invalid, void or unenforceable, all other provisions which are capable of separate enforcement without regard to an invalid, void or unenforceable provision are and will continue to be of full force and effect in accordance with their terms.
- h. The proper law of any contract for supply of goods or services by J.A. Martin Electrical shall be the law applicable in the State of New South Wales, Australia and the Client agrees to submit to the non-exclusive jurisdiction of the Courts of the State of New South Wales, Australia. The Client agrees that these terms and conditions of sale shall constitute the prevailing basis of agreement in the event of conflict with any terms and conditions of purchase furnished by the Client.

## 3. Estimates & Quotations

- a. All prices quoted by J.A. Martin Electrical are exclusive of GST (Goods and Services Tax) unless otherwise stated.
- b. All prices quoted by J.A. Martin Electrical are based on the work associated with the quotation being performed during times of ordinary rates of pay for labour and on the basis of a 38 hour week unless otherwise stated. Work required by the Client to be performed outside of these hours shall be additional to the agreed price unless otherwise stated.
- c. All prices quoted by J.A. Martin Electrical are valid for thirty days from the date of issue unless otherwise stated.
- d. All prices quoted by J.A. Martin Electrical and detailed as "Budget Price" or "Budget Estimate" or wording with similar meaning are best estimates only and do not constitute a fixed price offer.
- e. All prices quoted by J.A. Martin Electrical are based on the published AEEMA copper index as at the date of the quotation. Movements in this index between the issue date of the quotation and written acceptance by the Client shall entitle J.A. Martin Electrical to vary the quoted price accordingly.
- f. All prices quoted by J.A. Martin Electrical exclude the payment of any fees to any statutory body or any authority, and exclude any costs associated with approvals or permits relating to the Site Of The Works and to any goods or services supplied or to be supplied by J.A. Martin Electrical unless otherwise specifically stated.
- g. All prices quoted by J.A. Martin Electrical are conditional upon the Site Of The Works being free from asbestos and other toxic substances and should asbestos or other toxic substances become evident then the Client shall accept full responsibility and costs for the resolution of any problems arising as a result of such substances.
- h. All prices quoted by J.A. Martin Electrical are based on the Client providing, identifying, and marking all necessary survey and datum points.
- i. All prices quoted by J.A. Martin Electrical involving excavation, trenching, backfill and the like do not include allowance for the encounter of rock, shale or water during the performance of any associated works nor for any specific compaction other than free fill by gravity. Additional charges incurred for the identification, breaking, removal, transportation and disposal of rock, shale or water and/or compaction to levels other than free fill by gravity shall be borne by the Client.
- j. All prices quoted by J.A. Martin Electrical are based on J.A. Martin

Newcastle	Hunter Valley	Gunnedah
2 Martin Drive	73 Mt Thorley Rd	22 Mullaley Rd
Tomago, NSW, 2322	Mt Thorley, NSW, 2330	Gunnedah, NSW, 2380
Ph: (02) 4913 7000	Ph: (02) 6574 6733	Ph: (02) 6742 5000
Fax: (02) 4964 8160	Fax: (02) 6574 6752	Fax: (02) 6742 5532

J.A. Martin Electrical Pty Ltd.  
PO Box 126 Beresfield, NSW, 2322  
Electrical Licence No. 231234C  
Master Security Licence No. 410378463  
ABN: 11 146 308 063



Electrical being permitted to excavate by machine where excavation is required for the execution of the work detailed in the quotation. If the Client requires that J.A. Martin Electrical perform excavation work by hand then J.A. Martin Electrical shall be entitled to vary the agreed price to take into account additional costs associated with hand excavation.

- k. All prices quoted by J.A. Martin Electrical exclude any costs associated with the identification of any underground services unless otherwise explicitly stated. If the Client fails to advise J.A. Martin Electrical in writing prior to the commencement of any work of the location and type of underground services and such services are damaged by J.A. Martin Electrical then the Client shall indemnify J.A. Martin Electrical against any loss, damage or expense of whatsoever nature incurred in making good any loss or damage that J.A. Martin Electrical may make to the underground services.

#### 4. Work Schedule

- a. If not previously notified by the Client, then at the time of acceptance of a quotation provided by J.A. Martin Electrical the Client shall submit to J.A. Martin Electrical the proposed work schedule for the execution of the work detailed in the quotation. If J.A. Martin Electrical agrees to the work schedule then it shall form part of the contract between the Client and J.A. Martin Electrical and shall not be varied except in accordance with these terms. If a work schedule is not submitted or agreed upon then J.A. Martin Electrical shall complete the work detailed in the quotation in a time which is reasonable in all circumstances.
- b. The Client shall provide J.A. Martin Electrical with access to the Site Of The Works sufficient for J.A. Martin Electrical to complete the works associated with the quotation in a clear and unimpeded manner.
- c. If all work associated with a quotation provided by J.A. Martin Electrical is not completed within six months from the date of the quotation then J.A. Martin Electrical shall be entitled to vary the agreed price to take into account rise and fall in the costs of labour, materials and overhead.

#### 5. Extensions Of Time

- a. Where a work schedule has been provided by the Client and J.A. Martin Electrical is delayed due to cause beyond its control (including but not limited to acts of God, strikes, lockouts or other industrial disturbances, fire, explosion, regulations or orders of any statutory body or authority, or delays caused by any other person or company) then J.A. Martin Electrical shall be entitled to an extension of time to complete the associated work while such cause for delay exists.
- b. If any such delay detailed in Clause 5.a persists for six months or more then either party may by notice in writing to the other terminate the associated contract for the work. The termination of such contract shall not affect the rights and obligations of either party that accrued prior to such termination.

#### 6. Variations

- a. Where a written quotation has been provided by J.A. Martin Electrical and accepted by the Client and the Client or any of its agents varies any conditions detailed in that quotation after so accepting it, including but not limited to design, quantity, type, brand, colour, location, hours of work or site access, then J.A. Martin Electrical shall be entitled to vary the agreed price to take into account such changes and shall be entitled to an extension of time to complete the work where such changes impact on the time taken to complete the work.
- b. If J.A. Martin Electrical is required to pay its employees any additional rates or sums above that detailed in the prevailing employment instrument relevant to J.A. Martin Electrical due to conditions associated with the Site Of The Works such as site agreement, site allowance, redundancy provisions and the like then it shall be entitled to vary the agreed price to take into account any associated additional costs incurred unless otherwise stated.
- c. Where extra cost in labour, materials or overhead is incurred by J.A. Martin Electrical by virtue of acceleration of the agreed work schedule or due to the presence of obstacles that could not have reasonably been anticipated by J.A. Martin Electrical then J.A. Martin Electrical shall be entitled to vary the agreed price to take into account such conditions.

#### 7. Commissioning

- a. Unless otherwise agreed in writing, the responsibility of J.A. Martin Electrical in respect of commissioning any work performed by J.A. Martin Electrical shall be limited to proving conformance with the prevailing requirements as at the date of commencement of the work to:
- AS3000, and
  - any authority relating to the supply and use of electricity or electrical installations, and
  - any written specification provided by the Client as at the date of an associated quotation for the work provided by J.A. Martin Electrical.

#### 8. Compliance

The Client warrants that all equipment and fittings supplied by the Client, and to which J.A. Martin Electrical is required to connect its works, will conform with relevant Australian Standards and to the requirements of all statutory bodies and authorities.

#### 9. Risk & Title

- a. Title in any products, materials or goods sold or installed during the course of any works, or in the course of supply by J.A. Martin Electrical shall pass to the Client only upon payment in full of an associated Tax Invoice issued by J.A. Martin Electrical.
- b. J.A. Martin Electrical shall be entitled to an unpaid vendor's lien on any products, materials or goods until payment in full is received for an associated Tax Invoice issued by J.A. Martin Electrical.
- c. Except as otherwise provided herein, the goods supplied by J.A. Martin Electrical to the Client shall be at the Client's sole risk immediately on their delivery to the Client.

#### 10. PPSA

- a. The terms **Collateral**, **Debtor**, **Financing Change Statement**, **Financing Statement**, **Grantor**, **Proceeds**, **Secured Party**, **Security Agreement** and **Security Interest** have the meanings given in the PPSA.
- b. The Client acknowledges and agrees that by accepting these terms and conditions which form part of the contract and constitute a Security Agreement that covers the Collateral for the purposes of the PPSA:
- J.A. Martin Electrical holds (as Secured Party) a Security Interest over all of the present and after acquired goods supplied by J.A. Martin Electrical to the Client and any Proceeds of the sale of those goods (**Collateral**);
  - that any purchase by the Client on credit terms from J.A. Martin Electrical or retention of title supply pursuant to clause 9 hereof will constitute a purchase money security interest as defined under section 14 of the PPSA (**PMSI**);
  - the PMSI granted herein will continue to apply to any goods coming into existence or proceeds of sale of goods coming into existence;
  - J.A. Martin Electrical will continue to hold a Security Interest in the goods in accordance with and subject to the PPSA, notwithstanding that the goods may be processed, commingled or become an accession with other goods;
  - any Security Interest held by J.A. Martin Electrical will be a continuing and subsisting interest in the Collateral with priority to the fullest extent permitted by law over all other registered or unregistered Security Interest;
  - until title in the goods pass to the Client, it will keep all goods supplied by J.A. Martin Electrical free and ensure all such goods are kept free of any charge, lien or Security Interest and not otherwise deal with the goods in a way that will or may prejudice any rights of J.A. Martin Electrical under the contract or the PPSA;
  - in addition to any other rights under these terms and conditions or otherwise arising, J.A. Martin Electrical may exercise any and all remedies afforded to it as a Secured Party under Chapter 4 of the PPSA including, without limitation, entry into any building or premises owned, occupied or used by the Client, to search for and seize, dispose of or retain those goods in respect to which the Client has granted a Security Interest to J.A. Martin Electrical.
- c. The Client undertakes to:

- i. sign any further documents and provide such information which J.A. Martin Electrical may reasonably require to register, amend or update a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPSR;
  - ii. indemnify and upon demand reimburse J.A. Martin Electrical for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPSR or releasing any Security Interests;
  - iii. not register or permit to be registered a Financing Change Statement in the Collateral without the prior written consent of J.A. Martin Electrical; and
  - iv. provide J.A. Martin Electrical not less than 7 days prior written notice of any proposed change in the Client's name, address, contact numbers, business practice or such other change in the Client's details registered on the PPSR to enable J.A. Martin Electrical to register a Financing Change Statement if required.
- d. J.A. Martin Electrical and the Client agree that sections 96, 125 and 132(3)(d) and 132(4) of the PPSA do not apply to the Security Agreement created under this contract.
- e. The Client hereby waives its rights to received notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- f. The Client waives its rights as a Grantor and/or a Debtor under sections 142 and 143 of the PPSA.
- g. Unless otherwise agreed in writing by J.A. Martin Electrical, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- h. The Client shall unconditionally ratify any actions taken by J.A. Martin Electrical under this clause 10.
- i. This clause 10 will survive the termination of the contract to the extent permitted by law.

#### 11. Payment

- a. If applicable, payments must be made in accordance with the *Building and Construction Industry Security of Payment Act 1999* (NSW).
- b. J.A. Martin Electrical shall be entitled to submit monthly progress claims on a day nominated by J.A. Martin Electrical in respect of both those identifiable parts of work completed by J.A. Martin Electrical and any identifiable unfixed materials and/or goods stored by J.A. Martin Electrical which are intended for supply and/or installation as part of work performed by J.A. Martin Electrical for the Client.

#### 12. Warranties

- a. J.A. Martin Electrical warrants all work performed by its employees and its authorised agents against defective workmanship and against defective materials for a period of 6 months. Such 6 month period commences upon the earliest of:
  - i. the completion or energization of the associated work; or
  - ii. the completion or energization of an identifiable and relative portion of the associated work; or
  - iii. the receipt of the associated products, materials or goods by the Client where the service provided by J.A. Martin Electrical encompasses none other than supply.
- b. Any otherwise applicable warranty shall be voided by:
  - i. modification to any work performed by J.A. Martin Electrical, or modification to any products, materials or goods supplied by J.A. Martin Electrical by any party other than the employees or authorised agents of J.A. Martin Electrical; or
  - ii. failure to sufficiently maintain any associated work performed by J.A. Martin Electrical, or failure to sufficiently maintain any associated products, materials or goods supplied by J.A. Martin Electrical; or
  - iii. misuse or use in any manner other than that intended of any work performed by J.A. Martin Electrical, or misuse or use in any manner other than that intended of any products, materials or goods supplied by J.A. Martin Electrical.
- c. Except as expressly set out in these terms and conditions and except for liability under any Prescribed Terms, to the full extent permitted by law:
  - i. all conditions, warranties, guarantees, terms and obligations expressed or implied by law or otherwise relating to the contract or the performance of J.A. Martin Electrical's obligations under the contract or to any goods or services

supplied or to be supplied by J.A. Martin Electrical under the contract are excluded, except for those conditions and warranties as to title in the goods; and

- ii. without limiting the generality of the foregoing, J.A. Martin Electrical gives no condition, warranty or guarantee whatsoever as to the suitability, performance or fitness of the goods for their ordinary or any special use or purpose, and the description of the goods in any document shall not import any such condition, warranty or guarantee on the part of J.A. Martin Electrical.

#### 13. Risk & Liability

- a. The liability of J.A. Martin Electrical in contract or in tort for any act, omission or default arising from the design or provision of any service or arising from the supply of any materials, products or goods shall not extend to any consequential, economic or indirect losses.
- b. The Client retains liability for all risks associated with any work, in part or in full, performed by J.A. Martin Electrical on the Site Of The Works, and for all risks associated with any products, materials or goods supplied or installed, in part or in full, on the Site Of The Works at all times. The onus for insurance against such risks rests with the Client.
- c. The Client shall ensure that the employees and agents of J.A. Martin Electrical in carrying out work for the Client shall not be exposed to any risk to health or safety. The Client shall indemnify J.A. Martin Electrical in the event that an employee or agent of J.A. Martin Electrical sustains injury or deterioration of health in consequence of a breach of this provision.
- d. The Client shall keep J.A. Martin Electrical indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature, including, without prejudice to the generality of the foregoing, claims of death, personal injury, damage to property and consequential loss (including loss of profit) which may be made against the Client or which the Client may sustain, pay or incur as a result of or in connection with the manufacture, sale, export, import or use of the goods or services unless such costs, claim, demand, expense or liability shall be directly and solely attributable to any breach of contract or guarantee by, or negligence of, J.A. Martin Electrical or its duly authorised employee or agent.

#### 14. Insurance

Worker's Compensation and Public Liability insurance shall be effected by J.A. Martin Electrical in relation to, and during the course of, any work performed by J.A. Martin Electrical for the Client. Such insurance shall cover the interests of J.A. Martin Electrical only.

#### 15. Intellectual Property

J.A. Martin Electrical retains the rights to, and ownership of, any intellectual property associated with or arising from the performance of any design or work for the Client unless otherwise stated.

#### 16. Assignment and Subletting

- a. The Client shall not assign the contract in whole or in part without the prior written approval of J.A. Martin Electrical.
- b. JA Martin Electrical shall be entitled to subcontract any or all of the work.

#### 17. Default

- a. J.A. Martin Electrical may suspend any work for the Client, or terminate any associated contract with the Client and repossess any unfixed portions of any work performed by J.A. Martin Electrical for the Client for which the Client has not yet paid for if the Client fails to observe the terms of payment detailed in these terms or if the Client enters into an agreement or an arrangement with its creditors, or being an individual commits an act of bankruptcy or is made bankrupt, or being a company resolves or is ordered to be wound up or has a liquidator, receiver, receiver and manager, official manager or administrator appointed for any or all of its assets.

#### 18. Cancellation

If the Client requests cancellation of a contract between it and J.A. Martin Electrical or if it requests cancellation of any work being performed for it by J.A. Martin Electrical Pty for the Client then the Client shall pay J.A. Martin Electrical for all work performed to date and J.A. Martin Electrical shall also be entitled to a sum of 20% of the agreed price of the total work for profit, overhead, inconvenience and lost opportunity.