

CARMEN ELECTRICAL PTY LTD
General Terms and Conditions

1. Definitions

In these terms and conditions

- 1.1 **"Customer"** means the person or entity identified as such in CARMEN'S quote or any person or entity that gives CARMEN a Works Request and who is identified as the customer in CARMEN'S invoice for CARMEN'S Works carried out in connection with that Works Request
- 1.2 **"Default Interest"** means the rate prescribed the time the default under Section 2 of the Penalty Interest Rates Act 1983 (Vic) +3%
- 1.3 **"Price"** means the total amount payable to CARMEN as set out in its Quote or as provided for in clause 3 as varied in accordance with these terms and conditions
- 1.4 **"Quote"** means any estimate, quote or proposal given by CARMEN
- 1.5 **"CARMEN"** means CARMEN DATA ELECTRICAL PTY LT D ABN 19 156 110 708
- 1.6 **"CARMEN Works"** means all the work CARMEN will carry out and all the materials it will supply as described in its Quote or pursuant to a Works Request
- 1.7 **"Works Request"** means a request made of CARMEN to carry out works described in that request
- 1.8.1 **"Works Request Acceptance"** acceptance by CARMEN of a Works Request
- 1.9 **"Site"** means the place where CARMEN Works are to be carried out

2. Acceptance of Quotes and Works Requests

- 2.1 Quotes remain open for acceptance for 30 days from the date they are given
- 2.2 Any acceptance of a Quote received after then maybe rejected by CARMEN unless the customer agrees to an amended Price as notified by CARMEN.
- 2.3 Acceptance of a Quote will be regarded as acceptance of these terms and conditions subject only to any terms and conditions in CARMEN'S Quote which are inconsistent with these terms and conditions
- 2.4 When a customer gives CARMEN a Works Request that request will be regarded as accepted by CARMEN on the earlier of the date:
- (a) CARMEN commences works in connection with the Works Request;
- (b) CARMEN first acquires materials to be used for the relevant works;
- (c) CARMEN informs the Customer in writing that it accepts the Customer's Work Request.
- 2.5 Unless otherwise agreed by CARMEN in writing in a Works Request Acceptance these terms and conditions will apply to any Works Request accepted by CARMEN despite any inconsistent provisions contained in the Customer's Work Request

3. Price

3.1 Price amount

- The Price payable by the Customer for CARMEN Works is
- (a) the amount set out in CARMEN'S Quote; or
- (b) the amount set out in a Works Request accepted by CARMEN;
- (c) the amounts invoiced by CARMEN to the Customer if a Quote or Works Request does not specify a Price or fee rates at which works will be carried out and materials will be supplied and being in accordance with the standard fees or fee rates charged by CARMEN at the time or times works are carried out.

3.2 Price payment

The Price must be paid as follows:

- (a) as set out a repayment schedule forming part of a Quote or a Works Request or Works Request Acceptance;
- (b) if there is no payment schedule or if it is ambiguous then
- (i) a non-refundable deposit of 10% of the Price which will be payable within 7 days of request if requested by CARMEN at any time;
- (ii) by progress payments within the time period set out in invoices given by CARMEN for CARMEN'S Works carried out up to the date of the invoice and if no time period for payment is set out in an invoice then within 7 days of the date of invoice is given;
- (iii) within 7 days of the date CARMEN invoices the Customer for materials to be supplied in order to carry out CARMEN'S Works

4. GST

GST is to be paid by the Customer in addition to the Price at the same time as any deposit or instalment of the Price unless a Quote or Works Request or Works Request Acceptance clearly states that the Price is inclusive of GST

5. Price variations

- 5.1.1 The Price may be increased if
- (a) the Customer requests any variation in CARMEN'S Works as described in a Quote or Works Request or Works Request Acceptance and CARMEN agrees to the variation;
- (b) additional works are required as a result of the difficulties occurring in connection with CARMEN'S Works and being not reasonably foreseeable by CARMEN including without limitation:

- (i) delays or limitations in CARMEN'S ability to access the Site at any time;
- (ii) delays in completion of other necessary prior works at the Site by other parties at any time;
- (iii) inaccurate, or changes in, plans, measurements, quantities, specifications or other information provided by the Customer;
- (iv) discovery of
1. Asbestos or other contamination at the Site;
2. defects in any improvement at the Site;
3. rock or other inground obstructions at the Site; or
4. defects in any material supplied by the Customer for use in CARMEN'S Works
- (v) delays are experienced in commencing, carrying out or completing CARMEN'S Works for any reason beyond the reasonable control of CARMEN including without limitation:
1. inclement weather;
2. strikes or lockouts not caused by CARMEN
3. actions by third parties
4. damage by events beyond the reasonable control of CARMEN including without limitation damage caused by storm, tempest, fire, civil commotion, impact by vehicles or aircraft, or earthquake; or
5. shortage of labour or materials required for the carrying out of CARMEN'S Works; or
- (vi) the cost of materials to be supplied as part of CARMEN'S Works increases after the date a Quote or Works Request or Works Request Acceptance is given .

- 5.2 When the Price may be varied under clause 5.1 the increase will be in an amount quoted by CARMEN to the Customer and accepted by the Customer; and
- (a) In all other cases a fair and reasonable amount having regard to the nature of the additional works required or delays experienced and having regard to the standard fees or fee rates charged by CARMEN at the time the additional works are carried out and CARMEN is to be allowed a profit for additional works or delays
- (b)

6. Payment methods

- 6.1 A payment will not be regarded as made until received in cleared funds.
- 6.2 CARMEN may require reimbursement of fees charged by its bankers or others in respect of all payments made by credit card or by other means.
- 6.3 All payments are to be made to CARMEN are to be made without any deductions or setoff.

7. Customers representations and warranties

The Customer represents and warrants that

- (a) CARMEN will be permitted to freely enter the Site to carry out CARMEN'S Works;
- (b) the customer has or will have the unencumbered right and title to all materials it supplies to CARMEN for use in connection with CARMEN'S Works
- (c) the Customer has or will have full rights to use and to allow CARMEN to use all intellectual property, (including all patents, designs, trademarks and copyright) associated with all things given to it by or on behalf of the Customer to be used by CARMEN in connection with its Quote or Works Request Acceptance or CARMEN'S Works
- (d) the Customer has disclosed in writing to CARMEN all material facts known to the Customer that may affect CARMEN'S Works including without limitation the existence, nature and extent of any asbestos or contamination at the Site, the existence underground, nature and extent all rock or other obstructions at the Site and the existence, nature and extent of any defects in improvements at the Site;
- (e) before CARMEN'S Works commence the Customer has or will obtain all permits and consents required in connection with those works
- (f) all improvements at the Site are or will be constructed in a tradesman like manner, in accordance with all laws and applicable standards and are or will be capable of adequately supporting properly and safely all

- (g) things to be installed in those improvements as part CARMEN 'S Works all material supplied by the Customer for use in connection with CARMEN'S Works will be appropriate and suitable for their purpose, will be a new unless the Customer notifies CARMEN in writing otherwise, and complies with all relevant laws and regulations
- (h) the Customer has notified CARMEN in writing accurately of the location of all inground services at the Site or to be installed inground at Site including without limitation pipes and wires in connection with water, drainage, sewerage, gas, telephone and data services.

8. Risk

- 8.1 The Customer will bear all risks in connection with
 - (a) all things installed at the Site by CARMEN;
 - (b) all things stored at the Site when the Site is unattended including without limitation CARMEN tools and equipment and materials for use in connection with CARMEN 'Works
- 8.2 The Customer must make sure that
 - (a) all things referred to in clauses 8.1 are insured under a contractors all risk insurance policy while those things are at the risk of the Customer for full insurable value for loss and damage by all perils those things would be customarily be insured against in Victoria; and
 - (b) CARMEN will have the ability to directly make a claim under the relevant insurances for its loss and damage

9. Limitation of liability

- 9.1 CARMEN will not be liable to the Customer for any delays in commencing, carrying out or completing CARMEN'S Works because of events beyond its reasonable control including without limitation because of any of the events referred to in clause 5.1
- 9.2 CARMEN will not in any case be liable to the Customer for any indirect or consequential loss including without limitation, loss of profits or loss of opportunity or similar
- 9.3 The maximum liability of CARMEN to the Customer for any breach of this contract will be an amount equal to the Price
- 9.4 The Customer will be regarded as having released and discharged CARMEN from all liability in connection with CARMEN'S Works unless
 - (a) the Customer makes a claim in writing of CARMEN within 1 month of the date CARMEN Works are completed; and
 - (b) the Customer's claim for any single breach is in amount that exceed \$5,000; and
 - (c) the Customer institutes proceedings in respect of its claim within 1 month of the date notice is given under clause 9.4(a)
- 9.5 CARMEN will not be liable for any defect in any materials used in connection with CARMEN'S Works when the materials are supplied to CARMEN by third party because CARMEN does not give to the Customer any warranty regarding the quality or suitability of those materials.
- 9.6 The provisions of clauses 6.1 to 9 6.5 will not apply to the extent that they are inconsistent with the provisions of the Australia Consumer Law if the Customer is a consumer within the meaning of that law

10. Customer's representative

- 10.1 The Customer must appoint a person as its representatives for the purposes of Customers contract with CARMEN and must notify in writing CARMEN of the name and contact details of that person as soon as reasonably possible.
- 10.2 The Customer's representative will have the power and authority to represent the Customer in all respects in relation to the Customer's contract with CARMEN and will have authority on behalf of the Customer
 - (a) to give information to CARMEN;
 - (b) to give directions and approvals to CARMEN;
 - (c) to agree to variations to
 - (i) CARMEN Works;
 - (ii) the Price; and
 - (iii) these terms and conditions;
 - (d) to be the sole liaison in all respects with CARMEN in connection with CARMEN's Works

11. Customers default

- 11.1 (a) The customer must pay to CARMEN Default Interest on any money not paid when falling due and payable.
- (b) Default Interest is to accrue daily until the amount unpaid and accrued Default Interest is paid.
- (c) Default Interest is to be capitalised on the last day of each calendar month.
- 11.2 Any discount, rebate, incentive, concession or similar provided in CARMEN's Quote or in a Works Request or Works Request

Acceptance will cease to apply and will be immediately reimbursed by the Customer on demand if the Customer fails to make payment of any monies when those monies fall due and payable.

- 11.3 CARMEN's contract with the Customer will end if monies are not paid when falling due and payable and then remain unpaid for 30 days or more after CARMEN gives the Customer a written notice requiring payment and warning that if those monies and accrued Default Interest is not paid within 30 days of the date that notice is given.

- 11.4 When this contract is ended under clause 11.3

- (a) CARMEN is not obliged to carry out any more work;
- (b) CARMEN may dispose in any way it sees fit of any materials it has acquired the complete this contract; and
- (d) The Customer must indemnify CARMEN for any loss or damage it suffers or incurs because the contract has been ended under that clause including without limitation, and for example, loss on disposal of materials acquired by CARMEN to complete this contract and a fair and reasonable proportion of the Price having regard to CARMEN's Works carried out up to the date this contract is ended

12. Miscellaneous provisions

- 12.1 Time is of the essence in respect of all the Customer's obligations including without limitation in respect of payments to be made to CARMEN.
- 12.2 When the Customer consists of two or more persons or entities each of them will be jointly and severally bound by this contract.
- 12.3 These terms and conditions cannot be amended other than in writing signed by CARMEN and which expressly states that it is made to amend or replace these terms and conditions.
- 12.4 All monetary amounts are expressed in Australian currency.
- 12.5 Times and dates are times and dates in the State of Victoria.
- 12.6 Directions or approvals to be given to CARMEN must be given in writing by the Customer's representative and may be given by email, SMS or other similar electronic method. When given in the form of SMS or other method that does not usually permit the creation of a permanent printed record it be promptly be followed by a written confirmation in a form capable of creating a permanent written record for example by email.
- 12.7 Clause headings are for guidance only and are not to affect the interpretation or meaning of these terms and conditions.
- 12.8 CARMEN's rights to Default Interest and to end this contract in accordance with the terms and conditions are in addition to any other rights CARMEN may have arising from the Customer's default.
- 12.9 CARMEN is not required it incur any expense or to make any payment before exercising a right of indemnity.
- 12.10 The laws of the State of Victoria will govern this contact .
- 12.11 The courts of the State of Victoria and the Federal Court of Australia will have exclusive jurisdiction in respect of all disputes between the Customer and CARMEN in connection with this contract.

The Customer acknowledges that when

- (a) the Customer accepts a CARMEN Quote; or
- (b) CARMEN gives the Customer A Works Request Acceptance

the Customer will have made a binding contract with CARMEN and that these Terms and Conditions form part of that contract, except to the extent expressly stated as varied or deleted by CARMEN in writing.