

**TERMS AND CONDITIONS OF SPARK RITE ELECTRICAL CC** registration no. 2003/095273/23 (herein after referred to as "Spark Rite Electrical")

**General Note**

These Terms and Conditions shall have application to any contract for the sale of any goods, and the installation thereof as well as any services rendered by SPARK RITE ELECTRICAL whether that contractual arrangement arises out of:

- a) Any offer made by SPARK RITE ELECTRICAL and accepted by the client/customer; or
- b) Any offer made by the customer in response to a quotation from SPARK RITE ELECTRICAL.

Your attention is specifically drawn to the following and is to be carefully noted:

**1. IMPORTANT NOTICE:**

These terms and conditions contain certain terms and conditions which appear in similar text style to this clause and which:

- 1.1.1. **may limit the risk or liability of SPARK RITE ELECTRICAL; and**
- 1.1.2. **may create risk or liability for yourself and/or your company/employer; and**
- 1.1.3. **may compel you and/or your company/employer to indemnify SPARK RITE ELECTRICAL or a third party; and**
- 1.1.4. **may serve as an acknowledgement, by you and/or your company/employer, of a fact**
- 1.1.5. **You and/or your company/employer acknowledges, agrees to and understands the terms and conditions contained herein as well as the language (English) used herein.**

1.2. **Your attention is drawn to these Terms and Conditions because they are important and should be carefully noted.**

1.3. Nothing in these Terms and Conditions is intended or must be understood to unlawfully restrict, limit or avoid any right or obligation, as the case may be, created for either you or SPARK RITE ELECTRICAL.

**2. DEFINITIONS AND INTERPRETATIONS:**

2.1. Customer/Client means the person who accepts the quotation or who authorises SPARK RITE ELECTRICAL to carry out the work. The terms Customer and Client shall be used interchangeably

in this agreement. Any reference to "You" shall be a reference to Customer/Client.

2.2. Authorized person means any person authorized by the Customer/Client to Order the work or accept the work so done by SPARK RITE ELECTRICAL.

2.3. Words importing the singular shall include the plural and vice versa.

2.4. Words importing any gender shall be deemed to include all others.

2.5. The clause headings in the document are for convenience only and are not to be used for purposes of interpretation.

2.6. Where any word is defined within the context of any particular clause in these terms and conditions, that word, unless it is clear from the clause in question that, that word has limited application only to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of these terms and conditions, notwithstanding that, that word has not been defined in clause 2.

2.7. Except as otherwise provided in a particular clause in these conditions, where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last day shall be the next succeeding Business Day.

2.8. Any reference to "days" shall be construed as being a reference to calendar "days" unless qualified by the word "business" in which instance a "business day" shall be any day other than a Saturday, Sunday and/or a public holiday as gazetted by the government of the Republic of South Africa from time to time.

2.9. Terms other than those defined within these Terms and Conditions will be given their plain English meaning, and those terms, acronyms, and phrases known in the electrical and/or construction and/or legal compliance fields will be interpreted in accordance with their generally accepted meanings.

**3. EMAIL/TELEPHONIC/VERBAL ORDERS:**

3.1. Any order via email, telephone or verbally in any form by the client/customer **shall be deemed and treated as an offer by the Customer which shall be subject to the acceptance of SPARK RITE ELECTRICAL ..**

- 3.2. An agreement/contract between SPARK RITE ELECTRICAL and the Customer shall come into effect immediately upon acceptance of the quotation by the Customer.
  - 3.3. **Should the customer, pursuant to a quotation provided by SPARK RITE ELECTRICAL, pay any amount to Spark Rite Electrical, same shall be regarded, alternatively deemed to be the express, and unconditional acceptance of the full offer made by SPARK RITE ELECTRICAL, as contained in the quotation, in which case these terms and conditions shall be applicable.**
  - 3.4. These Terms and Conditions shall not be altered, modified or varied unless expressly agreed in writing by the duly authorized member of SPARK RITE ELECTRICAL.
  4. **PRICE:**
    - 4.1. The price shall be the price quoted by SPARK RITE ELECTRICAL at the time of the customer placing the order.
    - 4.2. **All quotes are valid for seven days only.**
    - 4.3. All quotations given are estimates only and may be subject to change upon viewing customers' exact specifications.
    - 4.4. Any variation to the price will be charged and invoiced accordingly to the customer placing the order.
    - 4.5. Prices include labour only unless materials are specifically listed.
    - 4.6. All Prices are exclusive of VAT.
    - 4.7. All materials to be supplied by client unless quoted for by SPARK RITE ELECTRICAL. In such instance, the quote will specify which materials are supplied by SPARK RITE ELECTRICAL and at what price.
  5. **PAYMENT:**
    - 5.1. Orders require a minimum \_\_\_\_\_(percentage) deposit paid in advance unless stated otherwise.
    - 5.2. Any purchase of goods, not included in an accompanying service, shall be payable upfront, and prior to SPARK RITE ELECTRICAL delivering the goods.
    - 5.3. Payment shall be made strictly within 30 days of SPARK RITE ELECTRICAL's monthly statement. Due dates of Invoices are clearly stated on SPARK RITE ELECTRICAL's statements.
    - 5.4. Payment is due on the due date, should this date fall on a Sunday, Saturday or public holiday, the debt shall become due on the banking day immediately preceding the due date.
  - 5.5. **Should funds not be available on the due date, it will be viewed/deemed to be late payment.**
  - 5.6. Payment shall be required from the Customer/Client. SPARK RITE ELECTRICAL shall not liaise with insurance companies or landlords in any circumstance. The Customer/Client is liable for all work done at all times.
  - 5.7. SPARK RITE ELECTRICAL shall charge interest on all overdue accounts at the rate of 24% per *annum* compounded monthly and calculated daily.
  - 5.8. In the event of non-timeous payment, SPARK RITE ELECTRICAL reserves the right to charge full tariffs and void any discounts granted as well as any guarantees granted.
  - 5.9. All insurance claims remain between client and the insurer. SPARK RITE ELECTRICAL shall not correspond with the insurer and/or client in connection with any insurance claims whatsoever.
  - 5.10. The customer remains liable for full payment of the invoice regardless of the outcome of the customer's insurance claim.
  - 5.11. In the event that payment is not made in accordance with these terms and conditions, or at all, such conduct will be construed as a material breach. SPARK RITE ELECTRICAL shall be entitled to cancel any and all of the agreements, or perceived agreements, between the parties hereto, and proceed with any claim they may be entitled to, without prejudice to any of their rights.
6. **DELIVERY:**
    - 6.1. Delivery times quoted are estimates only and time shall not be of the essence of the contract.
    - 6.2. **Delivery shall be deemed to take place when the goods arrive at the Customer's premises.**
    - 6.3. The Customer/Client shall inform SPARK RITE ELECTRICAL (in writing or verbally) of whom shall be responsible to accept delivery and/or work on the Customer/Client's behalf (the authorized person). In the event of the Customer/Client not being personally available at the delivery address and failing to specifically inform SPARK RITE ELECTRICAL of the identity of such authorized person who will be responsible for the acceptance of the delivery on the Customer/Client's behalf, **the Customer/Client hereby authorizes SPARK RITE ELECTRICAL to**

**deliver the purchased item/s to any natural person present at the nominated address who is over the age of 16.**

- 6.4. In the event that the Client/Customer becomes aware that they and/or their authorized person shall not be available at the delivery date, it is the Client/Customer's responsibility to inform SPARK RITE ELECTRICAL within 24 hours prior to delivery. Failing which the Customer/Client shall be responsible for wasted costs herein.
- 6.5. Should no-one be present at the nominated address at the time of delivery, the purchased item/s will be returned to SPARK RITE ELECTRICAL. The Client/Customer shall be liable for the wasted costs of delivery and related costs.
7. **OWNERSHIP:**
- 7.1. **Ownership of the goods shall not pass to the Customer until full payment of all outstanding invoices.** The client is obliged to return to SPARK RITE ELECTRICAL all goods belonging to SPARK RITE ELECTRICAL, upon request in the event of non-payment of invoices.
- 7.2. Notwithstanding any other rights SPARK RITE ELECTRICAL may have, SPARK RITE ELECTRICAL reserves the right to remove all goods, at the Customer's expense in the event of non-payment.
- 7.3. All risk shall be borne by the client at such time that the parties agree to the goods to be sold/services to be performed and the price to be paid.

8. **EXCLUSIONS**

- 8.1. **SPARK RITE ELECTRICAL shall be exempted from and shall not be liable under any circumstances whatever for:**
- 8.1.1. **any direct or consequential damages of any nature or any loss of profit or special damages of any nature, and whether in the contemplation of the parties or not, which the client may suffer as a result of any breach, by SPARK RITE ELECTRICAL;**
- 8.1.2. **any negligence (excluding gross) on its part or that of its servants or agents in carrying out any of its obligations under the contract.**
- 8.1.3. **Any claim for any alleged shortage in delivery or failure of the goods to comply with the contract, unless written notice of the claim is received.**

8.2. **Insofar as any of SPARK RITE ELECTRICAL's obligations under this contract are carried out by any of its servants, agents of sub-contractors, the provisions of 8.1.1-8.1.3 are stipulated with necessary changes for their benefit as well as SPARK RITE ELECTRICAL's.**

9. **GUARANTEE/WARRANTEE:**

- 9.1. Only workmanship performed by SPARK RITE ELECTRICAL will be covered by our warrantee.
- 9.2. No third party, or the client themselves, or agent thereto must have tampered with the workmanship of SPARK RITE ELECTRICAL whatsoever. In the presence of such evidence any warrantee shall be void *in toto*.
- 9.3. The client must provide SPARK RITE ELECTRICAL with the opportunity to remedy the defective workmanship within a reasonable time.
- 9.4. In the event that SPARK RITE ELECTRICAL is unable to remedy the defective workmanship, the client may elect to be repaid the amount of invoice issued by SPARK RITE ELECTRICAL less materials, alternatively, the client **shall obtain 3 quotes from registered electricians approved by SPARK RITE ELECTRICAL, to remedy the defective work.** SPARK RITE ELECTRICAL shall select one of the quotes and pay for same to a maximum of SPARK RITE ELECTRICAL's original invoice less materials.
- 9.5. Defective workmanship is to be reported to SPARK RITE ELECTRICAL, in writing, within 7 (seven) ordinary days of such defective workmanship coming to the attention of the client/or reasonable ought to have come to the attention of the client.
- 9.6. All goods installed by/used by SPARK RITE ELECTRICAL carry the warrantee/guarantee issued by such manufacturer of such goods unless otherwise stipulated.
- 9.7. SPARK RITE ELECTRICAL does not guarantee goods installed which were supplied by the client. SPARK RITE ELECTRICAL will only guarantee goods which were supplied by SPARK RITE ELECTRICAL.
- 9.8. SPARK RITE ELECTRICAL shall not be held responsible, in any way, for defects which have occurred due to the following:
- 9.8.1. Misuse, neglect, lightning, accident or improper storage;

- 9.8.2. Improper installation, handling or by repair or alteration not effected by SPARK RITE ELECTRICAL.
- 9.8.3. Customers failure to switch off sensitive equipment prior to commencement of work by SPARK RITE ELECTRICAL, or other generally negligent conduct on behalf of the customer.
- 9.8.4. Any defects/faults and the like which occur as a result of problems with the installation of anything which was not installed by SPARK RITE ELECTRICAL. SPARK RITE ELECTRICAL only guarantees their work and/or goods.
- 9.8.5. **In the event of the defect being caused by 9.8.1, 9.8.2, 9.8.3 or 9.8.4 above, the Customer shall be liable for inspection, shipping, handling, removal, work conducted, labour and the like incurred by SPARK RITE ELECTRICAL in connection with the alleged faulty good/service.**
10. **PRODUCT INSTALLATION SPECIFICATIONS:**
- 10.1. All products shall be installed according to manufacturer guidelines where applicable.
11. **LIABILITY OF SPARK RITE ELECTRICAL:**
- 11.1. The Customer understands that digging, grinding or excavating and so forth may occur and that this may cause noise, vibrations or dust. SPARK RITE ELECTRICAL shall not be liable for complaints in connection with such noise, vibrations or dust.
- 11.2. The Customer understands that when digging, grinding or excavating, damage may be sustained. **The customer indemnifies SPARK RITE ELECTRICAL against any claim or liability against SPARK RITE ELECTRICAL in this regard.**
- 11.3. It is the Customer's responsibility to inform SPARK RITE ELECTRICAL of the location of water pipes, electrical wiring, sewage or drainage lines under the surface of the ground or within walls. Failure to do so may result in damage to above. **The Customer indemnifies SPARK RITE ELECTRICAL against any claim or liability as a result of the customer's failure to adequately point out the location of water pipes, electrical wiring, sewage or drainage lines on the premises.**
- 11.4. **The customer indemnifies SPARK RITE ELECTRICAL against any claim or liability that be brought against SPARK RITE ELECTRICAL or which SPARK RITE ELECTRICAL may suffer in the course of, or arising out the provision of any of the Services or related to the goods, unless caused by SPARK RITE ELECTRICAL's gross negligence or wilful misconduct, but subject to relevant applicable laws.**
- 11.5. **It is specifically noted by the client that SPARK RITE ELECTRICAL is not responsible for any pre-existing damage whatsoever even when such pre-existing damage only becomes apparent after work by SPARK RITE ELECTRICAL has been undertaken.**
- 11.6. **The Customer is responsible to ensure that all regulations, laws, by-laws and the like have been complied with prior to commencement of work by SPARK RITE ELECTRICAL. SPARK RITE ELECTRICAL will not be liable for wasted costs, resultant damages or the like whatsoever in the event that the client has failed to obtain all necessary and relevant permits or has failed to comply with relevant regulations, laws, by-laws or the like. The Customer specifically warrants that it has obtained all relevant permits, has complied with all regulations and applicable legislation prior to placing of the Order.**
- 11.7. **The Customer is responsible to ensure that all relevant permits have been obtained prior to commencement of work by SPARK RITE ELECTRICAL. SPARK RITE ELECTRICAL will not be liable for wasted costs, resultant damages or the like whatsoever in the event that the client has failed to obtain all necessary and relevant permits. The Customer specifically warrants that it has obtained all relevant permits, has complied with all regulations and applicable legislation prior to placing of the Order.**
- 11.8. **The Customer hereby idemnifies and holds innocent SPARK RITE ELECTRICAL for any liability whatsoever, which may flow from the failure of the customer to make any required disclosures, and/or obtain the necessary authority/consent in terms of, but not limited to, any law, policy, contratual relationship or relationship in law.**
12. **CUSTOMERS/CLIENTS OBLIGATIONS:**

- 12.1. Customer/client shall arrange access to the premises as well as all power points and water points.
- 12.2. Customer/Client is responsible to switch off and unplug any and all sensitive/ other equipment prior to SPARK RITE ELECTRICAL commencing work. SPARK RITE ELECTRICAL is not responsible for damage which may occur to such sensitive equipment as a result of client's failure to switch off such sensitive equipment.
- 12.3. Customer/Client shall ensure that animals are locked away, if for whatsoever reason an incident does occur, the Customer/Client will be held liable for all medical, and other incidental expenses.
- 12.4. SPARK RITE ELECTRICAL staff are not permitted to work on live power whatsoever. The client shall arrange that power is switched off and on by themselves alternatively an authorized representative.
- 12.5. **Where an order is accepted for goods/material and delivery/collection has taken place, the onus rests on the client to to make sure that there are no faults. The client has 5 days to report said faults. SPARK RITE ELECTRICAL shall not accept any returns, or provide credit to the client after the 5 day period has expired.**
- 12.6. **SPARK RITE ELECTRICAL holds the full, and unfettered discretion to issue credit or another form of payment/restitution in the event of a return. Same shall not be regarded as repudiation of the agreement, unless otherwise conferred from the intention of the parties.**
- 12.7. **No Buyout or speceficlly manufactured items will be accepted for credit, nor will cancellations of orders be accepted once items have been manufactured or received into stock.**
13. **ACKNOWLEDGMENTS BY CUSTOMER / CLIENT:**
  - 13.1. SPARK RITE ELECTRICAL cannot warrant that the colour of a sample or of a brochure will not vary from the goods supplied by the manufacturer.
  - 13.2. The Parties both acknowledge and agree that SPARK RITE ELECTRICAL may engage any other party for the supply of goods and/or services of a similar nature to the services in this agreement. This agreement and accompanying relationship is therefore not an "exclusive relationship".
14. **CIRCUMSTANCES BEYOND CONTROL OF SPARK RITE ELECTRICAL/FORCE MAJEURE:**
  - 14.1. In the event that SPARK RITE ELECTRICAL is prevented from performing its obligations under any agreement with client by an event beyond its control (such as, but not limited to a strike, lock-out, shortage of labour or materials, delays in transport, accidents of any kind, any default or delay by any sub-contractor or any supplier), SPARK RITE ELECTRICAL will be excused for its delay in performing its obligations under the contract, or, in an extreme case (ie war, invasion, riot, violent commotion, terrorism, natural catastrophes and the like) it may be excused from having to perform the contract at all.
15. **BREACH/DEFAULT**
  - 15.1. If the client:
    - 15.1.1. breaches any of its obligations under this contract,
    - 15.1.2. is placed under liquidation or is sequestered, either provisionally or finally, whether voluntary or compulsorily,
    - 15.1.3. is placed under business rescue or ceases to carry on business or disposes of the majority or all of its assets,
    - 15.1.4. is unable to pay its debts as they become due, then SPARK RITE ELECTRICAL may without prejudice to its other rights, terminate the contract between the parties with immediate effect, without payment, compensation or performance to the Client in any form, including for any damages to the Client.
16. **LEGAL:**
  - 16.1. The customer agrees that the premises of delivery, principal place of business or residential address shall be the customer's domicile for all legal purposes.
  - 16.2. The client shall keep the contents of the agreement, and contract(s) and any information of or relating to SPARK RITE ELECTRICAL or its operations or affairs or the goods and/or services which may be acquired by the client, by virtue of its relationship created by this agreement, strictly confidential. ("confidential information")
  - 16.3. Clause 16.2 above includes the strict prohibition of the client to publish, disclose or reveal any Confidential Information to any other person or

party whatsoever, other than as may be required by law, without SPARK RITE ELECTRICAL's prior written consent.

- 16.4. Any failure on the part of you or SPARK RITE ELECTRICAL to enforce any right in terms hereof shall not constitute a waiver of that right.
- 16.5. No indulgence, extension of time, relaxation or latitude which any party (the "grantor") may show grant or allow to the other (the "grantee") shall constitute a waiver by the grantor of any of the grantor's rights and the grantor shall not thereby be prejudiced or stopped from exercising any of its rights against the grantee which may have arisen in the past or which might arise in the future.
- 16.6. Nothing in this contract, or the appendices hereto, shall be construed as constituting a joint venture, agency, or partnership between the parties.
- 16.7. This Agreement shall be governed by and construed in accordance with South African law.
- 16.8. The parties agree to the jurisdiction of the magistrates court in connection with any dispute arising out of or from this agreement, the effect of this is that the parties consent to the jurisdiction of the Magistrates court notwithstanding the fact that the amount would otherwise be beyond the jurisdiction of the Magistrates Court.
- 16.9. Neither party is precluded from approaching the High Court or similar court with jurisdiction to hear any dispute in connection with or arising from this agreement.
- 16.10. All costs incurred by SPARK RITE ELECTRICAL in connection with default of the Customer and/or in connection with any and all of SPARK RITE ELECTRICAL rights, shall be recoverable from the customer on attorney and own client scale.
- 16.11. In the event of an account having to be handed over to SPARK RITE ELECTRICAL's attorneys for collection due to non payment, the client will be liable for all costs on the attorney and own client scale including collection commission.

**17. SEVERABILITY:**

- 17.1. If any term, condition, provision or performance, or any part of a term, condition, provision or performance of this Agreement is determined to be invalid, illegal, unlawful or unenforceable to any extent, that term, condition, provision or performance or the relevant part thereof shall be

severed from the remaining terms, conditions, provisions and performance of this Agreement, or amended to make it valid, legal, lawful and enforceable, in such a manner as to leave the amended Agreement substantially the same in essence, and this Agreement so amended shall remain in force and effect.

**18. SURVIVAL**

- 18.1. Any provision in this agreement which contemplates performance or observance subsequent to any termination or expiration of the agreement shall survive such termination or expiration and continue in full force and effect.