



## Terms and Conditions

### 1. Definitions

1.1 "Electrician" shall mean LD Electrical and assigns or any person acting on behalf of and with the authority of LD Electrical.

1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Electrician to the Client.

1.3 "Guarantor" shall mean that person (or persons) who agrees to be liable for the debts of the Client on a principal debtor basis.

1.4 "Goods" shall mean all Goods supplied by the Electrician to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and includes Goods described on any invoice, quotation, work authorisation or any other forms as provided by the Electrician to the Client.

1.5 "Equipment" shall mean all Equipment including any accessories supplied on hire by the Electrician to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Electrician to the Client.

1.6 "Services" shall mean all services supplied by the Electrician to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).

1.7 "Price" shall mean the price payable for the Goods as agreed between the Electrician and the Client in accordance with clause 3 of this contract.

### 2. Acceptance

2.1 Any instructions received by the Electrician from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by the Electrician shall constitute acceptance of the terms and conditions contained herein.

2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.

2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Electrician.

2.4 The Client shall give the Electrician not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Electrician as a result of the Client's failure to comply with this clause.

2.5 Goods are supplied by the Electrician only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

### 3. Price And Payment

3.1 At the Electrician's sole discretion the Price shall be either:

(a) as indicated on invoices provided by the Electrician to the Client in respect of Goods supplied; or

(b) the Electrician's quoted Price (subject to clause 3.2) which shall be binding upon the Electrician provided that the Client shall accept the Electrician's quotation in writing within thirty (30) days.

3.2 The Electrician reserves the right to change the Price in the event of a variation to the Electrician's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation due to unforeseen circumstances, as a result of additional works required due to hidden or unidentifiable difficulties such as hard rock barriers below the surface or iron reinforcing rods in concrete or due to fluctuations in the currency exchange rate or as a result of increases to the Electrician in the cost of materials and labour) will be charged for on the basis of the Electrician's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.

3.3 The Electrician may submit detailed progress payment claims in accordance with the Electrician's specified payment schedule. Such payment claims may include the reasonable value of authorised variations and the value of any materials delivered to the site but not yet installed.

3.4 At the Electrician's sole discretion a non-refundable deposit may be required.

3.5 At the Electrician's sole discretion:

(a) payment shall be due on delivery/completion of the Goods; or

(b) payment for approved Clients shall be due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices.

3.6 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.

3.7 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus surcharge of up to 4% of the Price), or by direct credit, or by any other method as agreed to between the Client and the Electrician.

3.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

### 4. Delivery Of Goods

4.1 At the Electrician's sole discretion delivery of the Goods shall take place when the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by the Electrician or the Electrician's nominated carrier).

4.2 At the Electrician's sole discretion the costs of delivery are for the Client's account.

4.3 The Electrician may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.

4.4 The failure of the Electrician to deliver shall not entitle either party to treat this contract as repudiated.

4.5 The Electrician shall not be liable for any loss or damage whatsoever due to failure by the Electrician to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of the Electrician.

### 5. Risk

5.1 If the Electrician retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.

5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Electrician is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Electrician is sufficient evidence of the Electrician's rights to receive the insurance proceeds without the need for any person dealing with the Electrician to make further enquiries.

### 6. Title

6.1 The Electrician and Client agree that ownership of the Goods shall not pass until:

(a) the Client has paid the Electrician all amounts owing for the particular Goods; and

(b) the Client has met all other obligations due by the Client to the Electrician in respect of all contracts between the Electrician and the Client.

6.2 Receipt by the Electrician of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Electrician's ownership or rights in respect of the Goods shall continue.

6.3 It is further agreed that:

(a) where practicable the Goods shall be kept separate and identifiable until the Electrician shall have received payment and all other obligations of the Client are met; and

(b) until such time as ownership of the Goods shall pass from the Electrician to the Client the Electrician may give notice in writing to the Client to return the Goods or any of them to the Electrician. Upon such notice being given the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and

(c) the Client is only a bailee of the Goods and until such time as the Electrician has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to the Electrician for the Goods, on trust for the Electrician; and

(d) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that the Electrician will be the owner of the end products; and

(e) if the Client fails to return the Goods to the Electrician then the Electrician or the Electrician's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated and take possession of the Goods, and the Electrician will not be liable for any reasonable loss or damage suffered as a result of any action by the Electrician under this clause.

7. Personal Property Securities Act 1999 ("PPSA")

7.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:

(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and

(b) a security interest is taken in all Goods previously supplied by the Electrician to the Client (if any) and all Goods that will be supplied in the future by the Electrician to the Client.

7.2 The Client undertakes to:

(a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Electrician may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;

(b) indemnify, and upon demand reimburse, the Electrician for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;

(c) not register a financing change statement or a change demand without the prior written consent of the Electrician; and

(d) immediately advise the Electrician of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

7.3 The Electrician and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

7.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

7.5 Unless otherwise agreed to in writing by the Electrician, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.

7.6 The Client shall unconditionally ratify any actions taken by the Electrician under clauses 7.1 to 7.5.

### 8. Security And Charge

8.1 Despite anything to the contrary contained herein or any other rights which the Electrician may have howsoever:

(a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Electrician or the Electrician's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Electrician (or the Electrician's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.

(b) should the Electrician elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Electrician from and against all the Electrician's costs and disbursements including legal costs on a solicitor and own client basis.

(c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Electrician or the Electrician's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 8.1.

### 9. Client's Disclaimer

9.1 The Client hereby disclaims any right to rescind, or cancel any contract with the Electrician or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Electrician and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

### 10. Defects

10.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Electrician of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Electrician an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Electrician has agreed in writing that the Client is entitled to reject, the Electrician's liability is limited to either (at the Electrician's discretion) replacing the Goods or repairing the Goods.

### 11. Returns

11.1 Returns will only be accepted provided that:

(a) the Client has complied with the provisions of clause 10.1; and

(b) the Electrician has agreed in writing to accept the return of the Goods; and

(c) the Goods are returned at the Client's cost within fourteen (14) days of the delivery date; and

(d) the Electrician will not be liable for Goods which have not been stored or used in a proper manner; and

(e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

11.2 The Electrician may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of thirty percent (30%) of the value of the returned Goods plus any freight.

11.3 Non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.

### 12. Warranty

12.1 For Goods not manufactured by the Electrician, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Electrician shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

12.2 In the case of second hand Goods, the Client acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by the Electrician as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Electrician shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

### 13. Consumer Guarantees Act 1993

13.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Electrician to the Client.

### 14. Intellectual Property

14.1 Where the Electrician has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in the Electrician, and shall only be used by the Client at the Electrician's discretion.

14.2 The Client warrants that all designs or instructions to the Electrician will not cause the Electrician to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Electrician against any action taken by a third party against the Electrician in respect of any such infringement.

### 15. Default & Consequences Of Default

15.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Electrician's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

15.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by the Electrician.

15.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Electrician from and against all costs and disbursements incurred by the Electrician in pursuing the debt including legal costs on a solicitor and own client basis and the Electrician's collection agency costs.

15.4 Without prejudice to any other remedies the Electrician may have, if at any time the Client is in breach of any obligation (including those relating to payment) the Electrician may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. The Electrician will not be liable to the Client for any loss or damage the Client suffers because the Electrician has exercised its rights under this clause.

15.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of Five hundred dollars (\$500.00)) shall be levied for administration fees which sum shall become immediately due and payable.

15.6 Without prejudice to the Electrician's other remedies at law the Electrician shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Electrician shall, whether or not due for payment, become immediately payable in the event that:

(a) any money payable to the Electrician becomes overdue, or in the Electrician's opinion the Client will be unable to meet its payments as they fall due; or

(b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters

into an arrangement with creditors; or makes an assignment for the benefit of its creditors; or (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

### 16. Cancellation

16.1 The Electrician may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Electrician shall repay to the Client any sums paid in respect of the Price. The Electrician shall not be liable for any loss or damage whatsoever arising from such cancellation.

16.2 Cancellation of orders for Goods made to the Client's specifications or non-stocklist items will definitely not be accepted, once production has commenced.

### 17. Privacy Act 1993

17.1 The Client and the Guarantor/s (if separate to the Client) authorises the Electrician to:

(a) collect, retain and use any information about the Client and/or Guarantors, for the purpose of assessing the Client's and/or Guarantors creditworthiness or marketing products and services to the Client and/or Guarantors; and

(b) disclose information about the Client and/or Guarantors, whether collected by the Electrician from the Client and/or Guarantors directly or obtained by the Electrician from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client and/or Guarantors.

17.2 Where the Client and/or Guarantors are an individual the authorities under clause 17.1 are authorities or consents for the purposes of the Privacy Act 1993.

17.3 The Client and/or Guarantors shall have the right to request the Electrician for a copy of the information about the Client and/or Guarantors retained by the Electrician and the right to request the Electrician to correct any incorrect information about the Client and/or Guarantors held by the Electrician.

### 18. Unpaid Electrician's Rights

18.1 Where the Client has left any item with the Electrician for repair, modification, exchange or for the Electrician to perform any other Service in relation to the item and Electrician has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Electrician shall have:

(a) a lien on the item;

(b) the right to retain the item for the Price while the Electrician is in possession of the item;

(c) a right to sell the item.

18.2 The lien of the Electrician shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.

### 19. Construction Contract Act 2002

19.1 The Client hereby expressly acknowledges that:

(a) the Electrician has the right to suspend work within five (5) working days of written notice if intent to do so if a payment claim is served on the Client; and

(i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client; or

(ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or

(iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Electrician by a particular date; and

(iv) the Electrician has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.

(b) if the Electrician suspends work, it:

(i) is not in breach of contract; and

(ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and

(iii) is entitled to an extension of time to complete the contract; and

(iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.

(c) if the Electrician exercises the right to suspend work, the exercise of that right does not:

(i) affect any rights that would otherwise have been available to the Electrician under the Contractual Remedies Act 1979; or

(ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of the Electrician suspending work under this provision.

### 20. Equipment Hire

20.1 The Equipment shall at all times remain the property of the Owner and is returnable on demand by the Owner. In the event that the Equipment is not returned to the Owner in the condition in which it was delivered the Owner retains the right to charge the Hirer the full cost of repairing the Equipment. In the event Equipment is not returned at all the Owner shall have right to charge the Hirer the full cost of replacing the Equipment.

20.2 The Hirer shall;

(a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment.

(b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.

(c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by the Owner to the Hirer.

20.3 The Hirer accepts full responsibility for the safekeeping of the Equipment and the Hirer agrees to insure, or sell insurance, the Owner's interest in the Equipment and agrees to indemnify the Owner against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Hirer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

### 21. General

21.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Lower Hutt and are subject to the jurisdiction of the courts of Lower Hutt.

21.3 The Electrician shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Electrician of these terms and conditions.

21.4 In the event of any breach of this contract by the Electrician the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.

21.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Electrician nor to withhold payment of any invoice because part of that invoice is in dispute.

21.6 The Electrician may license or sub-contract all or any part of its rights and obligations without the Client's consent.

21.7 The Electrician reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Electrician notifies the Client of such change.

21.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

21.9 The failure by the Electrician to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Electrician's right to subsequently enforce that provision.